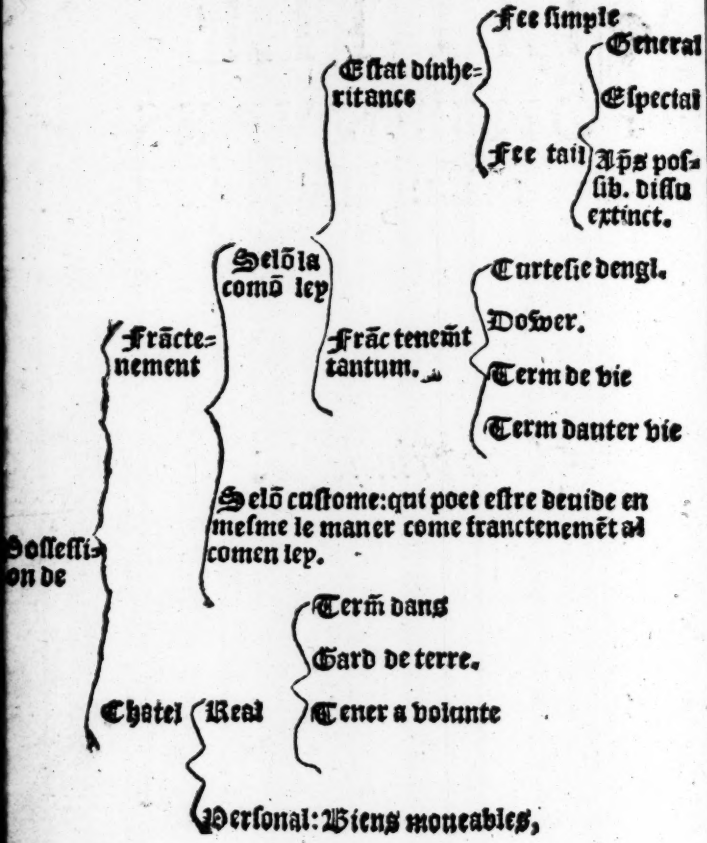
Joseph Gunning

¶ LITTLE-TONTENVRES in Engliſhe.

¶ *Cum priuilegio.*

A figure of the diuision of possessions.



Trē. March 27, 1597.

TEnant in fee ſimple is he whyche hath lands or tenements to holde to him & to his heires for euer.

And it is called in Latine feodum ſimplex, for feodum is called inheritaunce and ſimplex is as much to ſay as lawfull or pure, and ſo feodum ſimplex is as much to ſaye as lawfull or pure inheritance. For if a manne will purchaſe landes or tenements in fee ſimple, it behoueth him to haue theſe wordes in his purchaſe, to haue and to hold vnto hym & to his heyres, for theſe wordes (hys heyres) make the eſtate of inheritance. Anno. 10. H. 6. Folio. 38.

¶ For if any man purchaſe landes by theſe woordes to haue and to holde to him for euer or by ſuch wordes to haue and to holde to him & to his aſſignes for euer. In theſe two caſes hee hathe none eſtate but for terme of lyfe, for that ꝑ he lacketh theſe wordes his heyres, which wordes only make the eſtate of inheritance in all feoffements and grauntes.

¶ And if a man purchaſe landes in fee ſymple and dye withoute iſſue, euerye one that is his next coſin collaterall of the whole bloude, how farre ſo euer that hee be from him of degree may enherite and haue the ſame lande as heire to him. But if there be father and ſonne and the father hath a brother, which is vncle vnto the ſonne, and the ſonne purchaſeth lande in fee ſimple and dyeth withoute iſſue lyuinge the father, the vncle ſhal haue the lande, as heire

heire vnto the ſonne, and not the father (yet ꝯ father is more nighe of bloud vnto the ſonne) for that that there is a ground in the law, that inheritance may lineally diſcend, but not lyneally aſcend, yet if the ſonne in ſuch caſe dye wꝯout iſſue & hys vncle entreth into ꝯ lād as heir vnto the ſonne ſo as he ought by the law. and after if the vncle deceaſe wꝯout iſſue lyuynge ꝯ father. thā ſhal the father haue the land as heir vnto the vncle, & not heire vnto the ſonne for ꝯ ꝯ he commeth vnto ꝯ land by collaterall diſcent & not by lineall aſcencion.

And in ſuch caſe wher the ſonne purchaſeth lande in fee ſimple, and dieth without iſſue, they of his bloud on the fathers ſide ſhal inherite as heire vnto hym, before anye of the bloud of the mothers ſyde. But if he haue no heire on the fathers ſyde, then ſhal the land diſcend vnto his heire on the mothers ſyde. And thys is the oppinion of the Juſtices M. 12 E. 4. folio. 34. But there it was holden if any lande diſcend vnto a man by the fathers ſyde whiche dyeth without iſſue, that his next heire on the fathers ſyde ſhal inherite vnto hym, that is to ſay the next of bloud of the father of the graūd fathers ſyde. And for default of ſuche an heire they that bee of the fathers bloud of the parte of the mothers, of the father (that is to ſaye) the grādmother ought to inherite. And if there bee no ſuche heire on the fathers ſyde, then the lord ſhal haue the lande by eſchete. And ſo it is if a man take a wyfe inherite in fee ſimple.

Whiche

which hath issue a sonne & dieth, & ỹ sonne entreth into ỹ tenements as sonne & heire vnto his mother, & after dieth without issue the heires on the mothers side ought to enherite the tenements. & not the heirs on the fathers side.

And if there be no heirs on the mothers syde, then the lorde of whõe ỹ same lande is holden shal haue the same lande by eschete in the same maner it is if lands discende vnto the sonne on the fathers side, & entreth & after diethe without issue, the land shal discende vnto the heires on the fathers syde and not vnto the heires on the mothers side. And if there be none heirs on ỹ father side, then the lord of whome the lande is holden shall haue ỹ same lãd by eschete. And so ye maye see the diuersitie, where the sonne purchaseth lands in fee simple, & where he cõmeth into those lands or tenements by discent on the father side or on the mothers side

Also if there bee three brethren, & the middle brother purchaseth land in fee simple & diethe without issue, the elder brother shal haue the lande by discent & not the ponger. Also if there be three brethren, & ỹ pongest brother purchaseth land in fee simple & dieth without issue the elder brother shall haue the land by discent and not the middle brother for that ỹ the elder brother is more worthy of bloud.

¶ And it is to be vnderstanded that noe man shal haue lande in fee simple by discent as heire vnto anye man, but that hee bee hys heire of the whole bloud. For if a man haue issue twoe sonnes, by 2, ventres and the elder purchaseth

land in fee simple and dyeth without issue, the yonger brother shall not haue the land but the vncle of the elder brother or some other hys nighe cosyn shall haue it, for that ỳ the yonger is but of the haife bloude to the elder brother. And if a man haue a sonne and a daughter by one ventre, and a sonne by an other ventre & the sonne by the first venter purchaseth lande in fee simple and dieth without issue, the sister shal haue the lande by discent as heire vnto her brother and not the yonger brother, for that ỳ the sister is of the whole bloud to her elder brother.

And also where a man is seised of lande in fee simple, & hee hath issue a sonne & a daughter by one venter and a sonne by another venter and dieth, and the elder sonne entreth and dieth without issue, the daughter shal haue the land and not the yonger sonne, and yet ys the yonger sonne heir vnto his father and not his brother. But if the elder sonne enter not into the lande after the death of his father, but dyeth before entrie bee made by him, thē ỳ yonger brother may enter and haue the lande as heire vnto his father. But where the elder sonne in the case aforesaid entreth after the death of his father and therof hath possession, then ỳ sister shall haue the lande. Quia possessio fratris de feodo simplici facit sororem esse heredem. For the possession of the brother in fee simple maketh the sister to bee heire.

But if there bee twoe brethren by dyuers ventres

dentres, and the elder is ſeiſed in fee ſimple & dyeth without iſſue, and his vncle entreth as heyre vnto him, whiche alſo dyeth without iſſue, thē the yonger brother may haue the land as heire vnto hys vncle, becauſe hee is of the whole bloude to him though hee be but of halfe bloud vnto his elder brother.

And it is to be vnderſtande, that this woord inheritance, is not only vnderſtande where a man hath landes or tenementes by diſcente of heritage. But alſo euery fee ſimple or fee taile that a man hath by his purchaſe, may be ſaide inheritance, for that that his heires maye inherite hym. For in a writte of right that a man bringeth of lande, that was of his owne purchaſe, the writte ſhal ſaye: Quam clamat eſſe ius & hereditatem ſuam. That is to ſay which hee claimeth to bee his righte and his inheritaunce. And ſo it ſhalbee ſayde in diuers other writtes which a man or a woman bringethe of theire owne purchaſe as it appeareth by ỹ Regiſter.

And of ſuche things as a man maye haue a manuell occupacion, poſſeſſion or reſceyte, as of landes, tenements, rents, and ſuche other, a man ſhall ſaye in his pleding, and in way of barre, that one ſuch was ſeiſed in his demeſne as of fee. But of ſuch thinges that lye not in manuell occupacion &c. as of auowſon of a churche, and ſuch maner thing: there hee ſhall ſaye, that hee was ſeiſed as of fee, and not in hys demeſne as of fee, And in lattine it ys in

the same case said, Quod talis fuit seisitus in dominico suo vt in feodo, that is to saye, that suche one was seised in his demeane as of fee, and in that other. Quod talis fuit seisit⁹ &c. vt de feodo, that is to saye, that on such was seised as of fee.

And note wel that a manne maye not haue a more large ne greater estate of inheritance thē fee simple.

Also, purchase is called the possession of landes or tenements that a man hath by his deede or by hys agremente, vnto whiche possession hee commeth not by discente of anye of hys auncesters, or of hys cosins, but by hys owne deede.

¶ Fee taile

TEnaunte in fee taile is by force of a statute of westminster the second, Cap. primo. For at the common lawe before the said statute, all inheritaunce were fee simple. For al the gifts which been specified within the same statute, were fee simple condicionally, as it appeareth by the rehearsal of the statut. And now by the same statut, tenant in the taile is saide in two maners, that is to say, tenant in taile generall and tenant in tail special.

Tenaunt in taile general is, where landes or tenements bee geeuen to a man and to hys heirs of his body begotten. In this case it is said general tayle, for that that whatsoeuer woman that the tenant taketh to wyfe, if hee haue many wiues, and by eche of them hathe

yssue

yſſue, yet eche one of theſe iſſues by poſſibilitye maye enherite the tenements by force of ỹ ſaide gifte, becauſe that euery ſuch iſſue is of his body engendred.

In the ſame maner it is, where landes & tenementes bee geeuen to a woman and to the heires comming out of her body, howbeit that ſhee haue manye huſbandes, yet the iſſue that ſhee maye haue by eche huſbande, may inherite as iſſue in the taile by force of ſuch giftes. And therefore ſuche gyftes beene called generall taile.

Tenaunt in taile ſpecial, is where landes and tenements be geeuen vnto a man and hys wife and the heires of there two bodyes begotten. In ſuch caſe none may inherit by force of ſuche gifte, but thoſe that bee engendred betwene them two, and it is called eſpecial taile, for that if the wife dye, and he taketh an other wife and hath iſſue, the iſſue of the ſecond wife ſhal neuer inherite by force of ſuche gifte. For alſo the iſſue of the ſecond huſbande if the firſt huſbande dye.

In the ſame maner it is, where landes and tenements bee geeuen by a man vnto another with a wyfe, whiche is the daughter or coſin to the geeuer in frank mariage, whiche gifte hath inheritance by theſe woordes, frãke mariage, vnto it annexed, how be it that they bee not expreſſely ſaid or rehearſed in the gyfte that is for to ſaye, that theſe dones ſhal haue thoſe landes or tenements to them & to theire

heires

heires betwene two engendred, & this is layd especial taile, for that the issue of ỹ secõd wyfe may not inherite.

And note well, that thys woorde talliare, is to say to set vnto sõe certeinty, or els limitte vnto some certain inheritaunce. And for that that it is limit & set in certain, what issue shall inherit by force of such giftes, and how longe that the inheritance shal endure. Therefore it is called in latten. Feodum talliatum .i. hereditas in quadam certitudine limitata. For if tenant in generall tayle dye without issue, the donour or his heirs shal inherite as in their reuersion, in ỹ same wise it is of the tenaunte in the taile special &c. For in euery gifte of ỹ taile without more saying, the reuersion of fee simple is in the donour.

And the donees and theire heires shal doe to the donour and to his heires, suche seruices as ỹ donour dooth vnto his Lorde next aboue Except the donees in frank mariage, whiche shall he de quietly from euerye maner seruice (but it bee for fealtye) vntil the fourth degree bee past. And after that the fourth degree is past the issue in the fifte degree, and so foorth the other issues after him, shal holde of the donour and of his heires as the holde ouer as is aforesaide.

And the degrees in frank mariage shalbee accompted in such maner, that is to say, from the donour to the donees in frank mariage the first degree, for that that the wyfe that is one

of

of the donees oughte to bee daughter sister or other colyn to the donoure. And from the donees vnto ther issue shallbe accompted the seconde degree. And from theire issue vnto their issue, the third degree & so forth &c.

And the cause is, for that after euery such gyfte, the issues that come of the donoure, & the issues that come of the donees after the fowerth degree past of bothe parties in suche fourme to bee accoumpted, may betwixt them by the law of holy church intermary. And that the donee in franke mariage shalbee the firste degree of the fower degrees, a man may see in a plee vpon a writte of righte of warde, anno 31. E 3. wher the plaintife pleadeth that hys ayel or graundfather was seysed of certayne landes &c. And that hee helde of another by knights seruice &c. which gaue the lande vnto one Raufe Hollande with his sister in franke mariage &c. And also these tailes before saide bee specified in the saide estatute of westminster the second.

And ther bee dyuers other estates in ỹ taile how be it that they bee not specifyed by expresse woordes in the said estatute, but they be taken by the equitie of the statute, as yf landes bee geeuen vnto a man and to his heirs males of his body engendred. In suche case his heire male shall inherite, and the issue female shall neuer inherite, yet in these other tailes aforesaide it is otherwise. In the same maner it is if landes bee geeuen to a man and

to

to his heirs females of his body engẽdred. In this case his issue females shall enherite by force & fourme of the said gift and not the issue male, for that in such cases where the gift is: who ought to enherit & who ought not, ȳ will of ȳ donour shalbe obserued. And ȳ case where lands bee geeuen vnto a man and to his heires males issuinge of his bodye, and hee hath issue two sonnes and deceaseth, the elder sonne entreth as heire male. and hath issue a daughter and deceaseth, his brother shal haue the lande & not the daughter, for that the brother is heire male, But it shalbee otherwise in these other tailes aforesaide, whiche beene specified in the saide estatut, the daughter shal enherite before the brother.

And if lande bee geeuen vnto a man. and to his heirs males of his body engendred and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shal not inherite by force of the taile, for that who soeuer shall enherite by force of a gifte in the taile made vnto his heires males behouethe to conuey his discent away by the males. M.18. Edwardi tercij folio. 45. But in such case the donoure shall enter for that the donee is deade without issue male in the lawe. In so muche that the issue of the daughter maye not conueye to him the discente of heire male. And in the same maner it is where landes bee geeuen to a man and to his wife and to his heires

males

males of theire two bodies engendred.

Also if tenementes bee geeuen to a man and his wife, and to the heires of the bodye of the man engendred, in this case the husbande hath estate in the general taile & the wife but estate for terme of life.

Also if landes bee geeuen to the husbande and to the wyfe, and to the heires of the husbande Whiche he engendrethe of the bodye of the wife. In this case the husbande hath estate in the speciall tayle, and the wife but for terme of lyfe.

And if the gyfte bee made to the husbande and to the wife, and to the heires of the wyfe of her bodye by the husbande engendred, then the wife hath estate in the special taile. and the husband but for terme of lyfe. But if lands bee geuen to the husbande and the wyfe, & to the heires that the husbande engendrethe on the bodye of the wyfe: In this case bothe haue estate in the taile, for that this woorde (heyres) is not limitted no more to the one then to the other.

Also if landes bee geeuen to a man & his heirs that hee engendrethe on the bodye of his wife, in this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is geuen to the sonne, and to the heire of the bodye of his father engendred, this is a good taile, & yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equitie of the said estatute that bee not specified here. But if a man geeue landes or tenements to another to haue and to holde to him and to his heyres males, or to his heyres females, he to whome such gifte is made hath fee simple, for that it is not limitted by the gifte of what body the issue male or female shall be, and so it may not in any thinge be taken by the equitie of the said estatut, and therfore he hath fee simple.

¶ Tenant in taile after possibilitie of issue extinct.

TEnaunt in the taile after possibylitie of the issue extinct, is where as lands or tenemēts bee geeuen vnto a man and his wife in speciall taile, if one of them decease without issue, he that surupueth is tenant in the taile after possibilitie of issue extinct. And if they haue issue during the lyfe of the issue, hee that surviueth shal not bee saide tenaunt in the taile after possibilitie of issue extinct yet if the issue decease, & out issue, so that ther be none alive that may inherite by force of the taile, then he that surviueth of ỹ donees is tenāt in ỹ tayle after possibilitie of issue extinct.

Also if landes bee geeuen to a man and to his heires that bee engendred on the bodye of his wife. In this case the wife hath nought in the tenementes, and the husbande is seyssed

sed as donee in special taile. And in this case if the wife decease without issue of her body engendred by her husband, then the husband is tenant in the taile after possibilitie of yssue extincte.

And note well, that none maye bee tenaūt in the tayle after possibilytie of issue extincte but one of the donees, or the donees in speciall tayle, for the donee in generall taile may neuer be saide tenant in the taile after possibilitie of issue extinct for that alway during his lyfe, he may by possibilitie haue issue that may inherite by force of ẏ same taile. And so in ẏ same maner the issue ẏ is heire vnto the donees in a special tayle, may not bee sayde tenante in tayle after possibility. &c. causa qua supra.

And tenant in taile after possibylitie of yssue extinct shal neuer bee punished of wast, for the inheritance that once was in hym An. 10. H. 6. fo. 1. But hee in the reuercion maye enter if hee doth alien in fee. An. 45. E. 3. fo. 22.

¶ Tenant by the curtelie of Englande.

TEnaunt by the curtelye of Englande, is where a man taketh a wyfe seysed in fee simple, or in fee taile generall, or as heyre in the tayle specyall, and hathe yssue by the same wyfe, male or female. The yssue after beeinge dead or alyue, if the wyfe deceale, the husband shal holde the same duringe his lyfe by ẏ lawe

of

of England, & this is called tenant by the curtesy, for that it is not vsed in none other realme but onlye in Englande. And some say that it shall not bee saide tenant by the curtesy, but if that childe that hee hath by his wife bee harde crye, for by the crye is the proofe that the child that he had by his wife was borne.

¶ Tenant in dower.

TEnaunt in dower is, wher a man is seysed of certein landes or tenements in fee simple or in taile general, or as heire in the taile special and taketh a wife and deceaseth, the wife after the decease of her husbande shall bee endowed of the thirde parte of such landes or tenementes that were her husbandes anye time during the couerture, to haue and to holde to the same wife in seueraltye by metes and bondes for terme of her lyfe, whether shee haue by her husbande issue or none, and of what age that the wife bee, so that shee passe the age of nyne yeres at the time of her husbandes deathe, or els shee shall not bee endowed. and note well, that by the cōmon lawe the wife shal not haue for her dower but the thirde parte of the tenementes, which were her husbandes duringe the espousels. By custome of some countrey shee shall haue the halfe, an by custome of some towne or boroughe, shee shal haue the whole, and in all these cases shee shall be saide tenaunt in dower.

Also

¶Also there is two other manner of dowers, that is to saye. dower called dowemente at the church dooze, and dower called dowement by the fathers assent. Dowement at the Church-dooze, is where a man of full age is seised in fee simple whiche shalbee wedded vnto a wyfe, when he commethe to the churche dooze, and there after affiance, and truethe plighte made betwene them endowethe his wyfe of his whole lande, oz of the halfe oz lesse parcel, and there openly declareth the quantity & the certaine of his lande that shee shal haue foz her dower. In this case the wife after the deathe of her husbande shal enter into the saide quantitye of lande, of which her husbande endowed her without the assignemente of anye manne. Dowement by the fathers assent, is where the father is seised of tenementes in fee and his sonne and heire apparaunte when hee is wedded, endowethe his wife at the Churche dooze of parcell of the landes oz tenementes of his fathers of thassent of his father, and assigneth the quantitie of the parcelles. In thys case after the deathe of the sone, the wife shall enter in the same parcel without the assignement of any other. But it hath ben said in this case that it behoueth the wife to haue a deede of the father, prouinge his assent and consente of such endowemente. And if after the deathe of her husbande shee enter and agree to anye suche dower of the saide twoo dowers at the church dooze then shee is concluded to clayme

any other Dower by the common lawe of any landes or tenementes, whiche were of her sayde husbande: But if shee will, shee may refuse suche dower at the Churhe dooze, and then shee may bee endowed after the course of the common lawe. And note wel, that noe wife shalbee endowed of the fathers assente in the fourme aforsaide, saue where the husbande is sonne and heire apparaunte to his father.

¶ Inquire of these two cases of Endowement at the churche dooze, if the wife at the time of the deathe of her husband passe not the age of nine yeres, if she shal haue such Dower or no.

¶ And note wel, that in all cases where the certaintie appearethe what landes or tenementes the wife shal haue for her Dower, the wife maye enter after the deathe of her husbande withoute assignemente of anye other. But where the certeintie appearethe not, as to bee endowed of the thirde parte to haue in seueral, or to bee endowed of the halfe after the custome to holde in seueraltye: In suche cases it behoueth that her Dower bee vnto her assigned after the deathe of her husband beecause it is not lymitted before the assignemente what partes of landes or tenementes shee shall haue for her dower. But yf there bee two iointenauntes of certaine landes in fee, and the one alyeneth that that to him pertainethe and belongethe, to another

ther infee, which taketh a wife and after dyeth: In this case the wife for her dower shall haue the thirde parte of the halfe that her husbande purchased, to holde in common and occuppye in common as her part amounteth with the heire of her husbande, & withe the other tointenaunt which alienedd not, for that in such case her dower may bee alligned by metes & boundes.

¶ And it is to vnderstande, that the wife shal not be endowed of landes or tenementes that her husbande iointly helde with another at the time of his death. But where hee holdethe in common otherwise it is, as in the case aforesaide. And it is to witte that if the tenaunt in taile endowe his wife at the churche dooze as it is aforsaide, ỹ shal serue for litle or naught to the wife for that that after the death of her husbande the issue in the taile maye enter vpon the possession of the wife, and so maye he in the reuersion if there be none issue in ỹ taile aliue.

¶ Also if a man seised in fee simple being with in age, endowe his wife at the Churche dooze and dieth and the wife entreth. In this case ỹ heire of her husbande may put her out. But otherwise it is as it seemeth where the father is seised in fee, and the sonne within age endow his wife of his fathers assente the father then being of ful age.

¶ Also there is another Dower whiche is called Dowemente de la plais bealee. And that is in suche case that a manne is seised of,

of xl. acres of lande and hee holdeth xx. of the
said xl. acres of one man by knightes seruice,
and the other xx. acres of another in socage, &
taketh a wife and hath issue a sone, and diethe
his sonne beeing within the age of 14. yeares,
and the lorde of whome the lande is holden by
knightes seruice entreth into the xx. acres of
lande holden of him and them hath and occu-
pieth as warden in chiualry during the chyl-
des nonage, and the childes mother entrethe
in the remnant, and it occupieth as garden or
warden in Socage, If in this case the wyfe
bringe a writte of Dower againste the war-
den in chiualrye to bee endowed of the tene
mentes holden by knightes seruice in the kin-
ges court or in any other court, the garden in
chiualrye maye pledein such case all the mat-
ter and shewe how the wife is warden in so-
cage as is afore saide, and prayed that it maye
bee adiudged by the court that the wife endow
her selfe of the moste faire called pluis beale of
the tenementes that shee hathe as warden in
socage after the value of the thirde parte that
she claimeth to haue of the tenementes in chy-
ualry by her writte of dower, and if the wyfe
may not gaine saye it then the iudgement shall
bee made that the warden in chiualry shal hold
the landes holden of him during the nonage
of the childe quite from the woman &c. And
that the woman may endowe her selfe of the
most faire parte of the landes that shee hath as
wardeine in socage to the value of the thirde
parte

part that the wardeine in chiualry hath &c.
And after such iudgemente geeuen, the wyfe may take her neighbourez, and in there preſẽce endowe her ſelf by meetes and boundes of the faireſte parte of the tenementes that ſhee hath, as wardeine in ſocage to the value of the third parte of the landes that the wardein in chiualry hath, and that to haue and holde for terme of her life. And ſuch dower is called dower of ꝑ faireſt part, or de pluis beale.
¶ With this agreeth .xlv. Ed.iij.fo.4. But there it was ſaide, that after the time that the heire come to his full age, the wife ſhall haue a newe accion of dower a gainſt the heire to be endowed if the thirde part of al that the man died ſeiſed. And note wel that ſuch dowement may not bee, but where the iudgment is giuen in the kings court, or in ſome other court. And the wife may doe this for ſaluacion of ꝑ eſtate of the wardeine in chiualry during the nonage of the childe. And ſo ye maye ſee fiue maner of dowers, that is to ſay dowement by the common lawe, dower by cuſtome, dower at the church dooze, dower of the fathers aſſent, and dower of the moſt faire. And remember that in euerie caſe where a man taketh a wife ſeaſed of ſuch eſtate of tenementes &c. ſo that the iſſue that he hath by his wife may by poſſibilitie inherite the ſame tenementes of ſuche eſtate that the wife hathe, as heire to the wife: In ſuche caſe after the wife is dead, he ſhall haue the ſame tenements by the courteſie of Eng-

land & otherwise not.

¶ And also in euery case where the wife taketh an husbande seised of suche estate of tenemẽts &c. so that by possibility it may happe the wife to haue some issue by her husbande, & that ẏ same issue may by possibilitye inherite the same tenements of such estate that the husband had as heire to his father, of suche tenementes shee shal haue her dower, and otherwise not. For if the tenementes be geeuen vnto a mã and to the heirs that he getteth on his wifes body, in such case the wife hath nought in the tenements. And the husband hath estate but as donee in special taile. Yet if the husband die without issue, the same wife shalbe endowed of the same tenements, for that the issue ẏ she by possibilitie might haue had by the same husbande, may enherite the same tenementes. But if the wife decease liuinge ẏ husbande, & after taketh another wife, the secõd wife shal not be endowed in this case. Causa qua supra

¶ A man was seised of certaine landes, & tooke wife and after alyened ẏ same landes withe warrantye, and after the feoffoure & feoffee died, and the wife of the feoffour bringeth an accion of dower againste the issue of the feoffee, and he vouched the heire of the feoffour. and during the voucher and not termined, the wife of the feoffee bringeth an accion of dower againste the heire of the feoffee and demaundeth the thirde parte of al ẏ her husbande was seised, and would not demaunde

maunde the thirde parte of those two partes ꝑ her husbande was seised, it was iudged ꝑ shee should haue no iudgement vntil the time ꝑ the other plee were determined.

And also note that Mauisoure saith. that ꝑ a man be seised of landes and committeth felony and alieneth, and after is attainted, ꝑ wife shal haue good accion of dower against ꝑ feoffee. But if it be escheted vnto the king or vnto the lord, she shal haue no writ of dower. And so see ꝑ diuersity, & inquire the cause.

¶ Tenant for terme of life.

TEnaunt for terme of life is, where a manne letteth landes or tenementes to a man for terme of life of the lessee, or for terme of life of another man. In suche case the lessee is tenaunte for terme of life. But by common language, he that holdeth for terme of his owne lyfe, is called tenaunt for terme of life. and hee that holdeth for terme of an other mans lyfe, is called tenaunt for terme of an other mans life. And it is to be vnderstande. that there is feoffour and feoffee, donour and donee, lessour & lessee, The feoffour is properly where a man enfeoffeth an other in anye landes or tenementes in fee simple he that maketh the feoffement is called feoffour, & hee vnto whom the feoffement is made, is called feoffee, and the donoure is properly where a manne geeuethe certaine landes or tenementes to an other in

the taile, he that maketh the gifte is called donour, and he to whom the gift is made is called donee. And lessoure is proprelye where a man lettethe to an other certayne landes or tenementes for terme of lyfe, for terme of yeres, or to holde at will. he that maketh the lease is called lessour, & he to whom the lease is made is called lessee, and euery one that hathe estate in landes or tenements for terme of his owne life, or for terme of another mans life, is called tenaunt of free holde. And none of lesse estate maye haue freee holde, but theye of greater estate may haue free holde, for tenant in fee simple hath free holde, and tenant in the taile hath also free holde.

¶ Tenaunt for terme of. yeres. Cap. vij

TEnant for terme of yeres is, where a man letteth landes or tenementes to an other for terme of certaine yeares after the number of yeres that is accorded betwene the lessor and the lessee. and when the lessee entreth by force of the lease then is he tenant for terme of yeres and if the lessour in such case reserue to him a yerely rent vpon such lease, hee maye chose for to distreine for the rent in the tenementes letten, or els hee maye take an accion of debte for the arrerages againste the lessee. But in suche case it behoueth that the lessoure bee seised in the same tenementes at the time of his lease for

it is

it is a good plee for the lessee to say that ỹ lessour hath nothinge in the tenements at ỹ time of the lease, except the lease bee made by deede endented, in whiche case then such plee lyethe not for the lessee to plede.

¶ And it is to be vnderstand that in a leas for terme of yeares by deede or without deede, it nedeth no lyuery of seisin to be made to ỹ lessee, but hee maye enter whensoeuer he wil by force of the same leas. But of feoffemẽts made in the countrey or giftes in the taile, or leases for terme of life, in such cases where free hold shal passe if it be by deede or without deede it behoueth to haue lyuery of seisin &c. But yf a man let landes or tenemẽts by deede or without deede for terme of yeres, the remainder ouer to an other for terme of life, or in the taile or in fee then in such case it behouethe that the lessor make lyuery of seisin to the lessee for terme of yeares, or else there shal nothinge passe to them in the remainder, though the lessee enter in the tenements. And if the termour in suche case enter before any such liuerie of seisin made vnto him then is the free holde & ỹ reuercion in the lessour. But if he make any liuery of seisin vnto the lessee, then is ỹ free holde & ỹ fee to them in the remainder after the forme of the graūt & wil of the lessour.

¶ And if a man wyll make a feoffemente by deede or without deede of landes or tenementes that hee hathe in manye townes in one shiere, if the liuerye of seisin bee made in one parcell

parcel of the tenementes in one towne in the name of all, it sufficeth for al the other landes or tenementes comprehended in the same feoffemente, in al other townes in the same shiere, But if a manne make a deede of feoffemente of landes or tenementes in diuers shires, ther it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shall haue by the graunte of another fee simple. fee taile, or freehold without liuery of seisin. And if .ij. men be, & eche of them is seised of a quantitie of lād within one shire, and the one granteth his lād to the other in exchaunge for that land that ꝯ other hathe, and in the same manner the other graūteth his land vnto the first graūtor in exchange for the lād ꝯ the first graūtor hath: In this case eche may enter in the others lands so takē in exchāge without any liuery of seisin. And such exchange made by wordes of tenemēts in the same shire without any writing is good inough. And if the landes or tenementes bee in diuers shires, ꝯ is to saye, if that the one haue in one shire and the other haue in another shire it behoueth to haue a deede indented made betwene them of suche exchange.

¶ And note, that in exchange it behoueth, that the estates that bothe parties haue, in the landes so exchaunged be equal. For if the one willeth and graūteth that the other shal haue his lande in the taile for the lande that he hathe of the graunte of the other in fee simple, though the other is agreed to that, yet this exchange is but

is but void for that the estates be not euen.

¶ In the same maner it is where it is graunted and agreed betwene them that ye one shal haue in the one lād fee taile, and the other shal haue in the other lande but terme of life. Or if one shal haue in the one lande fee taile general, and the other in the other lande fee taile especial, So alwaie it behoueth that in exchange the estate of both parties be euen, that is to say if that one haue fee simple in the one lande ye the other shal haue such estate in the other lād and if the one hathe fee taile in the one lande. then the other shal haue likewise in the other lande. Et sic de aliis statibus. But it is nothinge to charge of the euen value of ye landes for though that the lande of the one is so much more in value than the lande of the other, thys is nothing to purpose, so that the estates made by the exchaunge bee euen, and so in exchaūge be two grauntes, for euerye parte grauntеth his lande to the other in exchaunge, & in eche of their grauntes mencion shalbee made of the exchaunge.

¶ And if a man let lande to another for terme of yeres though the lessour die before the lessee enter into the tenementes, yet may hee enter in to the tenementes after the death of ye lessour for that, that the lessee by force of ye lease hath righte incontinent to haue the tenementes after the fourme of the lease. But if a manne make a deede of feoffement vnto another, and a letter of attorney to a man to deliuer to him

seysin

seisin by force of the same deed, yet if the liuery of seisin be not made in the life of him that made the deede, it auaileth not, for that the other hath no maner of righte to haue the tenementes after the purporte of the deede before the liuery of seisin &c. And if no liuery be made then after the death of him that mad the deed the right of such tenements is cõtinent in his heire or in some other. Also if tenementes be let to a man for terme of halfe a yere, or for terme of a quarter of a yeare. &c, In suche case if the lessee make waste, the lessoure shal haue against him a writ of waste, and the writte shal saye: Quitenet ad terminum annorum. But hee shal haue a special declaracion vppon the trouth of his matter, and the plee shal not abate the writ for that that he maye haue no other writ vpon the matter. In. 7, H. 7, fo. 1

¶ Tenant at will Ca. 8.

TEnante at will is, where landes or tenementes bee letten by a man vnto another to haue and to holde to him at the will of the lessour, by force of which leasse the lessee is in possession. In such case the lessee is called tenant at will, for that he hath no certaine surr estate. for the lessour may put him out at what time it pleaseth hym, yet if the lessee sowe the lande and the lessour after the sowinge and before that his graines be ripe putte him out, yet shal the lessee haue his graines, and shal haue free egresse and regresse to reape and to carrye his

his greines. for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the land, and the terme is ended before that his graines be ripe. In this case the lessor, or he in the reuersion shal haue the greines, for that the fermour knewe well the certeine of his terme and when his terme shoulde be ended.

¶ Also if an house bee let to a man to holde at wil, by force of whiche the lessee entreth into the house, within which house he bringeth his housholde stuffe and after the lessour putteth him out, yet shal hee haue free entre, egresse and regresse in the same house by reasonable time to cary his goodes and housholde stuffe. And if a man be seised of a house in fee simple fee taile, or for terme of life, the whiche hathe certeine goodes within the same house, and maketh his executours and deceaseth, whoe soeuer after his deathe hathe ỹ house yet shall his executors haue free entre, egresse and regresse to carry out of the house the gooddes of their testatours by a reasonable time.

¶ Also if a man make a deede of feoffemente vnto another of certaine lande, and deliuereth to him the deede but no liuery of seisin, In this case he to whome the deede is made may enter into the lande, and holde and occupy it at the wil of him that made the deede for ỹ, that is pued by the wordes of the deede, that it is hys wil that the other shal haue the lande. But

he

he that made the deede, may put him out when he wil.

¶ Also if an house be let to holde at wil, the lessee is not holden to sustaine or repaire the house as tenante for terme of yeres is holden to doe. But if the lessee at wil make voluntarye waste, as in pulling downe of houses or in cutting or felling of trees: It is saide that the lessour shal haue for that against him an action of trespas. As if I. deliuer to a man my sheepe to dong or marle his land, or mine oxen to ayre his lande, and he slayeth my beaste, I may wel haue accion of trespas against him notwithstanding the deliuery.

¶ Also if the lessour vpon suche lease at wil reserue vnto him a yerely rent, hee maye distreine for the rent behinde, or to haue for that an accion of debt at his owne choise. H.6.R 2. in Repleuyn.

¶ Tenant by copy of court role Cap. 9.

TEnant by copye of courte role, is as if a manner bee seised of a manner within whiche Maner there is a custome, and hath beene vsed in time out of minde, that certeyne tenauntes within the same manner haue vsed to haue landes or tenementes to holde to thē and to theyr heires in fee simple or in fee taile, or for terme of life &c. at the wil of the lorde, after the custome of the same maner, and suche tenaunte maye not aliene the lande by deede, for than the

the Lorde may enter as in a thinge forfait to him. But if hee will aliene his lande to another him behoueth after some custome to surrender the tenementes in some courte &c. into the lordes handes to the vse of him that shall haue the estate in suche fourme, or to suche effecte. Ad hanc curiam venit A. de B. et sursum reddidit in eadem curia, vnum mesuagium &c. in manus domini ad vsum E de A. et heredum suorum vel heredum de corpore suo exeunt vel pro termino vite sue &c. Et super hoc venit predictus E, de A. & cepit de domino in eadem curia, mesuagium predictum &c. habendum & tenendum sibi & heredibus suis vel sibi & heredibus de corpore suo exeuntibus, vel sibi, ad terminum vite sue, ad voluntatem domini secūdum consuetudinem manerii faciend et reddendo inde redditus, debit seruicia, consuetudines inde prius debitas, et de iure consuetas, et dat domino de fine &c.

Et fecit domino fidelitatem &c. That is to say A. of B. commeth vnto this courte and surrendrethe in the same courte a mese &c. into the handes of the Lorde, to the vse of E. of A. and his heires, or to the heires issuing of his bodye or for terme of life &c. And vppon that commeth the forsaide E. of A. and taketh of the lorde of the same courte, the forsaide mese &c. to haue and to hold to him and to his heirs and to him or to his heires issuinge of his bodye, or to him for terme of life at the Lordes will after ye custome of the maner, to do & yelde

therefore rentes, dettes, seruices, and customes thereof before due and accustomed. &c. and geueth the Lorde for a fine &c. and maketh vnto the Lorde his fealtie &c. And such tenantes beene called tenantes by Copy of courte rolle, for that theye haue none other euidence concerninge theire tenementes, but the copies of the courte rolles and suche tenantes shall not implede nor bee impleded of theire tenementes by the kings writte but if they will implede other for theire tenemẽts they shal haue a plaint made in the court of the Lord in suche forme or to suche effect. A de B. queritur vers' C. de D. de placito terre. videlicet de vno messuagio quadraginta acris terre quatuor acris prati &c cum pertinenciis, Et facit protestacionem sequi querelam istam in natura breuis domini Regis assise mortis antecessoris ad cõmunem legem, vel breuis domini Regis assise none disseisine ad communem legem.

That is to saye A. of B. complaineth against C. of D. of a plee of lande, that is for to saye of a mese, and xl. acres of lande, fower acres of medowe &c. with the appurtenances, and maketh protestacion to sue his plainte in nature of the kinges writ of assise of the deathe of his antecessoure at the common lawe, or by writte of our soueraigne lorde the king of assise of novel disseisin at the common lawe, or in nature of somme other writte &c. pledges and proces F. G. And though that some such tenãtz haue inheritaunce after the custome and maner, yet they

they haue none estate but at ꝯ Lordes will & after the course of the common law, for it is saide, if the lord put them out they haue none other remedy but to sue vnto the lorde by petition, For if they had any other remedy. they should not be saide tenants at the lords will after the custome of the maner, but the lorde will not breake the custõe that is resonable in such cases. But Bryan chiefe Justice sayeth that his oppinion alwaies hath beene and alwaies shalbe, if such a tenaunt by custome (paying his seruices) bee cast out by ꝯ lord he shal haue an acciõ of Trespas against him H. 21. E. 4. And likewise was the oppinion of Danby cheife Justice. M. 7 E 4. for hee sayeth that the tenant by the custome is aswell inherit to haue his land after ꝯ custome as well as he that hath franktenemẽt by the common law.

¶ Tenantes by the yarde be in such nature as tenauntes by coppe of courte roulle. But the cause for which they bee called tenaunts by the rodde or yarde is , for that when they will surrender theire tenementes into the Lordes hande to the vse of another they shal haue a lytle yarde or rodde by the custome & vse in theire handes which they shal deliuer vnto the stewarde or baylife, after the custome and vse of the Maner. And he that shal haue the lande, shall take the same land in the court, & his taking shalbe entred in the roull And the Stewarde or ꝯ bailife, according to

the custome, shal deliuer vnto hym that taketh the land, the same yarde of another yard in the name of seysin. And for this cause they bee called tenauntes by the yarde. But they haue none other euydēce but copy of ꝯ court rolle.

¶ And also in diuers lordeshippes & manoures there is such custome if such a tenant that holdeth by the custome will alienc hys lands or tenementes hee maye surrender his landes vnto the Bailiffe or to the Reeue, or to two sad men of the same lordship, to ꝯ vse of him that shal haue the land, to haue in fee simple, fee taile, or for terme of life &c. and al that, shal he presente at the next court. And then hee that shal haue the lande by coppe of court rolle, shal haue the same lande after the entent of the surrender. Also it is to weete that in diuers lordshippes & diuers maners there be made diuers customes in suche case, as to take tenauntes & as to plēd, and as tou chinge other thinges and custōes to bee dōe & all that that is not against reasō may well be admitted and allowed. And such tenaunts that hold after the custome of a seignoury, or after ꝯ custome of a maner, though they haue estate of inheritance after the custome of the lordship or of the maner, yet beeause the haue not any free hold by the course of the cōmon lawe, they be called tenaunts by base tenure.

¶ And diuers diuerslities there bee betwene a tenaunt at will which is in by ꝯ lesse of his lessour

lessour by the course of the common law, and tenant after the custome & maner in ỹ fourm aforesaide. For tenant at will after the custome may haue estate of enheritance as it is aforesaid at the Lordes will after the custõe and vsage of the maner. But if a man haue landes or tenements which be not within suche maner or lordship where such custome hathe beene vsed in the fourme aforesaid, and will let suche landes or tenementes to another, to haue and to holde to him and to his heires at the will of his lessour these wordes, to the heires of the lessee bee voyde, for this ys the cause if the lessee dye and his heire entrethe, the lessour shal haue a good accion of trespas against him, but not so against the heire of the tenant by the custome &c. in any case for that the custome of the maner in some case maye helpe him to barre his Lorde in anyaccõ of trespas.

¶ Also tenant by the custome in some places ought to repayre and sustaine the houses and the other tenant at will ought not.

Also one by the custõe shall doo fealtie & the other not. And dyuers other diuersities ther be betwene them.

¶ Thus endeth the first booke.

Homage is ỳ moſt honozable ſer-
uice & moſt humble ſeruice of re-
uerence that a franktenant may
do to his Lozd. Foz whē ỳ te-
naunt ſhal make homage to his
Lozde he ſhal deſend and hys head vncoue-
red, & his Lozde ſhal ſit, and the tenaunt
ſhal kneele before him on both his knees, and
holde his handꝭ ioyntly together betweene ỳ
handꝭ of his Lozde, and ſhal ſaye thus. I be
come your man frō this day foꝛward of life
& limme & of earthly woꝛſhip & vnto you
ſhal be true & faithfull, & beare you faith of ỳ
tenementꝭ that I clayme to holde of you ſa-
uing the faith ỳ I owe vnto our ſoueraigne
Lozd the kinge. And then the lozd ſo ſyttyng
ſhal kyſſe him.

But if an abbot oꝛ a Pꝛiour oꝛ anye other
man of religion ſhal make homage vnto his
Lozde, hee ſhal not ſaye, I become your
man foꝛ that hee hath pꝛofeſſed himſelfe only
to be godꝭ mā. But he ſhal ſay thus, I doo
you homage and vnto you ſhall bee trewe &
faithful, and beare you faith foꝛ ỳ tenemētes
that I clayme to holde of you. Sauyng the
faithe that I owe vnto our ſoueraigne lozd
the kinge.

Alſo yf a woman ſole ſhal make ho-
mage vnto her Lozde. ſhee ſhall not ſaye I
become your woman, foꝛ that is not conue-
nient foꝛ a woman to ſaye that ſhee ſhall be-
come the woman to anye but only to her huſ-
band

bande when she is wedded. But she shal say I make vnto you hōage, and to you shalbee true and faithfull, & shal beare you faith of the tenemēts that I hold of you, sauīge the faith that I owe to our soueraigne Lord ꝑ Kynge.

But if a man haue seueral tenācies which he holdeth of seueral Lordes, that is to saye euery tenancy by homage. Then when he maketh homage vnto one of his Lordes, he shal saye in the ende of his homage, Sauing the fayth that I owe vnto the kinge and vnto my other Lordes.

¶ And note well that none make homage but such as haue estate in fee simple or in fee tayle in his owne right or in an other mannes right. For it is a grounde in the law, that he ꝑ hath estate but for terme of life, shal make none homage nor take none homage.

For if a woman haue landes or tenemēts in fee simple or in fee tayle which she holdeth of her Lorde by homage, and taketh one husbande and hath issue, then the husbande in ꝑ like of the wife shal make homage, for that he hath tytle to haue the lande, by ꝑ curtesye if he survive his wife. And also he holdeth in ꝑ right of his wyfe. But afore issue betweene them, the homage shalbe made in both theire names. But if the wife decease before homage made by the husbande in the wyues lyfe, and the husband holdeth himselfe in as tenāt by the curtesy, hee shal make no homage vnto

his Lorde, for ỳ he hath then none estate but for terme of life. More shalbee said of hõage en the tenure of homage auncestrell.

Fealtie. Cap. 2.

FEaltie is as much to say as fidelitas in latine, and when a franktenaunt shall make fealtye vnto ỳ Lorde hee shall hold his right hande vpon a booke and shal say thus. Heare you this my Lord, ỳ I vnto you shal be faithful and true. and beare you faithe of ỳ landes or tenements ỳ I clayme to holde of you, and truelye to you shall do the custões & seruices ỳ I ought to do vnto you at termes assigned, as God me helpe & all his saincte, & then he kysseth the booke. But he shal not knele whẽ he maketh his fealtie, nor shal make such humble reuerence as is afore saide in hõage. And great diuersity there is had betweene making of fealtie & of homage. For hõage may not be made but to the Lord him selfe. But the Stewarde of the Lords court or the bailiffe may take fealtie for the Lorde

¶ Also tenant for terme of life shall make fealtie, and yet he shal make none homage, & diuers other diuersities there be betweene hõage and fealtie,

¶ Also a man maye see a goode note. anno 15, E 3. where and how a man and his wyfe made homage and fealtie in the cõmon banke whiche is written in suche fourme. Note

that

that Jhon Lewknor & Elizabeth his wyfe made homage vnto William Thorp in thys maner. The one & the other held iointly their hands betwene the hands of william Thorp & the husband said in this wise wee vnto you make homage, and beare you faith for ỹ lands ỹ wee hold of you your conuisour which hath granted you oure seruices in B & in C & the other townes &c. against al men sauing ỹ faith ỹ wee owe vnto our soueraigne lord the king & to his heirs, & to our other lordes & ỹ one & ỹ other kissed him. And after they made fealtie, & ỹ one & the other helde theire handes together vpon a booke, & ỹ husbande said these words, & both kissed ỹ booke, more shalbe saide of fealtie in the tenure of socage & in the tenure of franke almoigne, & in the tenure of hõage auncestrell.

¶ Eſcuage.

Escuage is called in latin, Scutagiũ, that is to say seruice of shield. And such a tenãt that holdeth his lande by escuage, holdeth by knights seruice. And also it is cõmõly sayde that some holde by a fee of knightes seruice, & some by ỹ halfe fee of a knightes seruice &c And it is saide ỹ whẽ the king maketh a voyage roial into Scotlãd for to subdu ỹ Scots he that holdeth by a fee of knightes seruice, behoueth to be with the king by xl. daies wel and conuenably arrayed for the warre. And

likewise hee ꝑ holdeth his lande by the halfe of a fee by knightes seruice ought to be with the king by .xx. dayes. And he ꝑ holdeth his lande by ꝑ fowerth parte of a fee by knights seruice, him behoueth to be with the king by x. dayes, And so after the quantitie. hee that hathe more, to do more. & hee ꝑ hathe lesse, to doe lesse. But it appeareth by ꝑ plees & argumentes made in a goode plee vpō a Writte of Detinue of an obligaciō brought by one Hēry Gray An 7. E. 3 that it nedeth not to him that holdeth by escuage to goe him selfe, if he will finde an hable person for the warre conuenably arrayed for the warre, to goe with the kinge, & that seemeth good reason. For it may be ꝑ he ꝑ holdeth by such seruice is sicke in such wise that he may not go nor ride.

And also an Abbot or anye other man of religion, or a woman sole ꝑ holdethe by suche seruice, ought not in such case to goe in ꝑper person. And sir William Herle ꝑ tyme chiefe Justice of the common place, said in the said plee that Escuage shall not bee graunted but where the king himselfe goeth in ꝑper person And so it abode in iudgement in the same plee if these xl. dayes shal bee accompted from the day of the muster of ꝑ kinges hoste made by the commons & by the kinges commaundement: Or els frō the day ꝑ the kinge first entreth into Scotlande &c. therfore inquire of this matter.

¶ And after suche voyage into Scotlande it

it is commonly sayd that by the auctoryte of parliament, the escuage shalbe set and put in certaine, that is for to saye, a certaine summe of money how much euery one ỹ holdeth by a whole fee of knights seruice which was not in his owne proper psõ, nor none other for him with the kinge, shal pay vnto the Lord of whom hee holdeth his land by escuage. as put case that it was ordeined by auctho̅ritie of parliamẽt ỹ euery on ỹ holdeth by a whole fee by knight seruice which was not with the king shal pay to his Lord xl.s. Then he that holdeth by the halfe of a fee by knightes seruice, shal pay vnto his Lorde but xx.s. and so who more more: & who lesse, lesse. And some tenauntes holde ỹ if escuage runne by auctoritie of parliamẽt to anye summe of moneye ỹ theye shal pay but the halfe of that summe and some but the fowerth parte of ỹ summe. But because the escuage ỹ they shal pay is not certaine, for ỹ it is at no certaine what ỹ parliamẽt wyll assesse ỹ escuage, the hold by knightes seruice. But other wise it is of escuage certain of which shalbe spoken of in the tenure of socage.

And if a man speake generally of Escuage, it shall bee vnderstande by the common speache of Escuage not certayne which ys knights seruice. And such escuage draweth vnto him homage, & homage drawethe vnto him fealtie, for fealtie is incydent to euerye manner of seruice, but to the tenure of frank-

frank almoigne as it shal bee sayde hereafter in tenure of frank almoigne. So as hee that holdeth by escuage, holdeth by hōage, fealtye and escuage.

¶ And it is to be vnderstande, that when escuage is so sessed by auctoryty of parliamēt euery Lord of whō ye lande is holden by escuage, shal haue the escuage so sessed by the parliament, because it is vnderstand by ye law that at the beginning suche tenementes were geuen by the lordes to holde by such seruices to defende theire Lordes as well as ye kinge, and to set in quiet & rest their Lordes and the kinge of Scottes aforesaid. And for that such tenementes came first of the lordes it is reason that they haue ye escuage of their tenementes.

¶ And the lords in such case may destreine for the escuage so assessed, or they may haue ye kings writs directed vnto the Shirifes of ye shires to leuie such escuage for them as it appeareth by the Register. fo. 88.

¶ But of suche tenauntes that holde of the king by escuage which were not with ye king in Scotlande. the kinge hiin selfe shal haue ye escuage.

¶ Item in suche case aforesaide, wher the king maketh a voyage royall into Scotland and the escuage is assessed by parliamēt if ye Lorde destreyne his tenaunt that holdeth of him by seruice of a whole knightes fee, for ye escuage so assessed &c. And the tenant pleadeth

and

nd will auerre that he was with ỹ king in Scotlande &c. by xl. dayes, & the Lorde will auerre the contrary, it is sayde that it shalbee tried by the certificacion of the cõstable of ỹ kings host in writing vnder his seale whiche shalbe sent to the Justices.

¶ Homage, fealtie, and escuage.

¶ Enure by homage, fealtie, & escuage, is to holde by knightes seruice, and it drawethe vnto him warde, martage, & relefe. For whẽ such a tenant dyeth his heire male being . xb nage of xxi. yere, the lorde shal haue ỹ lands holden of him vntille the age of the heire of xi. yere, which is called plaine or ful age for that suche an heire by the vnderstanding of ỹ law, is not able to doe knights seruice before the age of xxi. yere.

¶ And also if such an heire bee not maried at the time of the death of his auncester, then the Lorde shall haue the warde and martage of him. But if such a tenaunt dye his heyre female being of the age of fourteene yeare or more, then the lorde shal not haue the warde neyther of the lande nor of the bodye, for that a woman of such age may haue an husbande able to doe knightes seruice. But if suche an heire femal bee within ỹ age of fourteine yeare and not maried at the time of the death of her auncester, then the Lord shal haue the warde

ward of the lande holden of hym till the
of such an heire female of xvi. yeare. For
it is geuen by the statute of westminster
fyrst cap, 12. that by two yeare next folow
the sayde xtiē. yeare, the Lorde maye ten
a cōuenient mariage without disperagyng
such an heyre female. And if the Lord do
tender her suche mariage within the said
yeare, then she at the end of ỹ saide two y
may enter and put out the lorde. But if
an heyre femal bee maried within the ag
xtiē. yeare in the lyfe of the aunceſter, and
aunceſter dye, shee beeing within the ag
xtiē. yeare, the lorde shal haue but the wa
of the lande till an ende of xtiē. yeare of ag
suche an heire female. And then her husba
and shee may enter into the lande and put
the Lorde. for this is out of the case of ỹ
tute. In so much that the lord cannot ten
mariage to her that is maried &c. For bet
the said estatut of westminster the first
yssue femal that was within age at xtiē.
at the tyme of the deathe of her aunceſter
after that shee had accōpliſhed the age of
yere without any tēder of mariage of her
the Lord, suche an heire femal then myg
enter into the land and put out the Lord
it appeare the by the reherſall & by the wo
of the same estatute. So that ỹ saide statu
was made in such case al for the auaunta
of the Lord as it seemeth. But yet that at
tymes it is vnderstande by ỹ woordes of t
sam

ne eſtatute, that the Lorde ſhall not haue
two yere after the xiiij. yere as it is afore
de,

¶ And note well that the full age of their
ie and femal after the common ſpeache, is
de the age of xxi. And the age of diſcretion
ſaid the age of xiiij. yeares. for a childe at
h age whiche is wedded within ſuche age
a woman may agree to the mariage or
agree.

¶ And if the wardeine in chiualrye marye
re his warde within the age of xiiij. yere, &
er the age of xiiij. yeres he diſagreeth to ꝑ
riage. It is ſayde by ſome folke ꝑ the
lde is not holden by the laſwe to be mary-
another tyme by his wardeine, for that
wardeine had once the mariage of hym,
d therfore hee was out of his ward as cō-
ning the ward of his body. And when hee
d once the mariage of him and therefore
s out of his warde he ſhal no more haue ꝑ
aryage of him. In the ſame maner it is if
wardeine marye him and the wife dye ꝑ
ylde beyng within age of xiiij. yeres or xxi.
ares. And that the chylde maye diſagree to
ch mariage when he cōeth to thage of xiiij.
re it is ꝓued by the woordes of the ſtatute
Marton cap. 6. that ſayeth thus. De domi
s qui maritauerunt illos quos habēt in cuſ
dia ſua villanis & aliis ſicut burgenſis vbi
ſparagenk, ſi tales homēs fuerint infra 14.
nos & talis etatis ꝙ matrimonio conſentire

non

non possint, tunc si parentes illius cõque
dominus ille amittat custodiam illam usq
etatem heredis. Et omne commodum qõ
receptum fuerit conuertatur in commodũ
redis infra etatem existentis secundum di
sitionem parentũ ꝓpter dedecus et impo
Si autem fuerit xiiij. annorum & vltra q
consentire poterit, & tali maritagio consen
ryt, nulla sequatur pena. And so it is pro
by the same statute that no desparage sha
but where that he that hath ỹ warde mari
him within the age of xiiij. yeare.

¶ Also it hathe bene a question howe th
woordes should be vnderstand. Si paren
conquerantur &c. And it seemethe vnto so
that considering the statut of Magna ca
Cap. 6. that wylleth that heredes maritent
absq; disperagatione &c. vpõ which this l
statut of Marton vpon this point is gro
ded as it seemeth, and in so much that it w
neuer sene that any accion was brought b
the accion of Marton for such desperagy
against the warden, and if anye accion ma
be taken vpon such matter, it shalbe taken
common presumption before this tyme, o
some time to be put in vre, that these word
shalbe vnderstande in such manner. Si pa
tes conquerantur. i. Si parentes inter se l
mentantur, which is as much to saye that
the cosins of such a child haue cause to ma
lamentacion and complaint amonge them
the shame doone to theire cosin so disper

which

which is in a maner a shame to them all. that may the nexte cosin to whõe the heritage mai not discend, enter and put out the wardein in chiualrye. And if he will not, another cosin of the chyldes may do it and he to take ỹ issues and profits vnto the vse of the childe, and of that yelde the chylde accompt when hee commeth vnto his full age. Or els the chyld him self may enter himselfe & put out the warden &c. sed quere de hoc,

Also ther is many other diuers disparagynges, which be not specified in the same statute. As if the heire that is in warde be maried vnto one that hath but one foote, or one hande or els deformed or lame or hauing an horrible disease, or els a great and continuall infirmitie, or if the heire male be maried to a woman passed childe beringe. And manye other causes of disparagynge there bee but inquire for them, for it is good matter to learn And of heires males that bee within age of xxi. yere after the death of their aūcesters vnmaried. In such case the lorde shall haue the mariage of such an heire, and haue space and tyme to tender to him conuenable marryage without disperaging within ỹ same time of xxi. yeare.

And it is to witte, that the heyre in suche case maye choose if hee will bee maryed or no. But if the Lorde whiche is called wardein in Chiualrye tender a conuenable maryage to suche an heire wythe-

is

in the age of xxi. yere without diſperagyng and the heire refuſe, and marye not him ſelf within the ſame age: Then the ſaid warde ſhal haue the value of the maryage of ſuch an heire, But if ſuch an heire male mary hi ſelfe within the age of xxi. yeares, againſt t will of the wardeine in chiualrye: Than ſh the wardeine haue double the value of th mariage by the force of ỹ eſtatute of Wert aforeſaide, as in the ſame ſtatut is more fu ly compryſed.

¶ Alſo dyuers tenants hold of their lord by knightes ſeruice and yet the holde not b eſcuage, nor pay no eſcuage as they that ho their landes by caſtlewarde, that is to ſay, keepe a tower of a caſtle, or a gayle or ſom ther place by reaſonable warnig when the lordes heare tell that enemies will cõe, or cõe into England. And in many other caſe a man may holde by knightes ſeruice, & y he holdeth not by eſcuage, nor payeth no eſc age, as ſhalbe ſaide in the tenure of Graun ſerteantie. But in al caſes wher a man hol deth by knyghts ſeruice, ſuche ſeruices dy ſweth to the Lorde warde & mariage.

And if a tenaunt that holdeth of his lorde b ſeruice of an whole knights fee dye, his hei beig at full age of xxi. yere, his heire ſhal pa vnto his lorde C.s. for a relyefe, & he ỹ hol deth by the halfe fee, ſhal pay. l. s.

¶ Alſo if a man holde his lande of his lor by the ſeruice of two knyghtes fees, then th

heire

heire at full age at the time of the death of hys aunceſter, ſhal paye to his lord tenne pounds for a reliefe.

Also if there be graundfather, mother, & ſonne, and the mother dieth liuinge the father of the ſonne, and after the graundfather which held his lande by knightes ſeruice dieth ſeiſed and the lande deſcendeth to the ſonne of ỹ mother, as heire to the graundfather whiche is within age in ſuche caſe the lorde ſhal haue ỹ warde of the land, but not the ward of ỹ heire For that none ſhal be in warde of his bodye lyuing his father, becauſe the father during hys life ſhal haue the mariage of his heire apparāt and not the lorde. Otherwiſe it is if ỹ father bee dead liuing the mother, where the land holden in chiualry, diſcendeth to the ſonne on the fathers ſide &c.

Also if a man bee ſeaſed of land whiche is holden by knightes ſeruice, and maketh feoffement in fee to his vſe, and dieth ſeaſed to ỹ vſe of his heire within age, and no wil by him declared. the Lorde ſhall haue a writte of rights, of the body and the land, Likewiſe if ỹ tenant had died ſeiſed of the demeſne And if the heire be of ful age at the deathe of his aunceſter. In ſuch a caſe he ſhal paye reliefe. Likewiſe if hee had ben ſeiſed of the demeſne, and that is by ỹ ſtatute of an. 4. H. 7. ca. 7.

Also there is a warden in righte in chiualry, & wardē dede in chiualry, wardē in righte in chiualry. is where the Lorde becauſe of his

lordshype is seised of the warde of the land, and the heir vt supra. Wardein in deede in chyualry is where the Lorde in such case after his seisine graunteth by deede or without deede ỹ ward of the lande or of the heire, or of bothe, to another man by force of which graunte. the graūtee is in possession than is ỹ grauntee called wardein in deede &c.

¶ Tenure in socage. Cap. 5.

TEnure in socage, is where the tenaunt holdeth of his lorde his tenancye by certayne seruice for al maner of seruice, so that the seruice be not knights seruice. As where a man holdeth his lande of his Lorde by fealtye and certeine rente for al maner of seruice, or els where a man holdethe hys lande by homage fealtie, and certaine rente, for al maner of seruices for homage by himself maketh not knights seruice.

Also a man may holde of his lord only by fealty, and suche tenure is tenure in socage, for euery tenure that is not tenure in chiualry, is tenure in socage. And it is said that the cause wherefore suche tenure is said. and hathe the name of tenure in socage, is thus. Quia hoc socagiū idē est, ỹ seruitē soce. Et hec soca soce idē est ỹ caruca. s. one soke or one plough lād. And in old time before ỹ limitacion of time in mind great

greate parte of the tenantes that holde theire Landes by ſocage ought to come with theyre plowes euerye of the ſaide tenauntes by certeyne dayes in the yere, to eyre and ſowe the Lordes landes of his owne graines. But for that ſuche woorkes were done for the liuelode and ſuſtenance of their Lordes, theye were acquited againſte theire lorde of al maner of ſeruices.

And for this that ſuch ſeruice was done with theire plowes, ſuch tenure was called tenure in ſocage, And after that ſuche ſeruice was chaunged in diuers other manner ſeruice by conſente of the tenantes, and by the deſyre of theire lordes, that is to ſaye into a yerely rent &c. But yet the name of Socage abydeth, & in diuers places tenauntes yet doe ſuche ſeruice withe theire plowes vnto theire Lordes ſo that al maner of ſeruices that be not tenures by knightes ſeruice bee called tenures in ſocage.

¶ Alſo if a man holde of his lorde by eſcuage certaine. That is to ſaye, in ſuch fourme, that when eſcuage rennethe and is aſſeſſed by the Parlyamēt to a more ſumme or to a leſſe ſūme that the tenant ſhal pay to the Lorde but halfe a marke for eſcuage, and neyther more ne leſſe to howe greate ſumme or lytle ſumme that the eſcuage runneth, in this caſe, becauſe the eſcuage is in certaine before that anye eſcuage is aſſeſſed &c. Suche tenure is tenure in Socage and not knightes ſeruice. But where the

ſomme that the tenante ſhal paye for eſcuage, is not certeine, that is to ſaye, where it may be that the ſomme that the tenante ſhal paye for eſcuage may bee at one time more and another leſſe, after that it is aſſeſſed &c. thā ſuch tenure is tenure by knightes ſeruice.

¶ Alſo if a man holde his lande for to paye certeine rente to his lorde for caſtel warde, ſuche tenure is tenure in ſocage, But where the tenantes ſelfe ought by him or by anye other to make caſtle ward, ſuch is tenure by knightz ſeruice.

¶ Alſo in all caſes where the tenante holdeth of his lorde to paye to him any certeine rent, ỹ rent is called rent ſeruice.

¶ Alſo in ſuch tenures in ſocage if the tenaunt haue iſſue and die, his iſſue beinge within the age of 14. yeres then the next frend of ỹ heire to whome the heritage maye not diſcende ſhall haue the warde of the lande, and of the heyre vnto the age of the heire of 14. yeres, and ſuch wardeine is called wardeine in Socage. For if lande diſcende to the heire by the fathers ſide then the mother, or ſome other nighe coſine of the mother ſide ſhal haue the warde. And if lande diſcende to the heire by the mothers ſide then the father or the next frend of the fathers ſide ſhal haue the warde of ſuch landes or tenementes. And when the heire commeth to the age of 14. yeres complete, hee may enter & put out his wardeine in Socage, and occuppe the lande himſelf if he will. And ſuch wardeine in

ſocage

ſocage ſhal take no iſſues or profites of ſuche landes or tenementes to his owne vſe, but only to the vſe and profit of the heire, and of that ſhal peld accompt when it pleaſeth the heyre after that the heire hath accompliſhed the age of fourteene yeres. But ſuche a wardeine vpon ſuche accompte ſhal haue allowance of al hys reaſonable coſtes and expences of all thinges. And if ſuche a wardeine mary the heyre within age of xiiii. yere. hee ſhall make accompte to the heire or to his executors of the value of the mariage, though he tooke nothinge for the value of the mariage, for that it ſhal bee rected his owne folye that he woulde marye him without takinge the value of the mariage without he mary him to ſuche a mariage that is worth in value as muche as the mariage of the heire &c. Alſo if anye other man that is not a nyghe frende &c. occuppe the landes and tenementes of the heire as wardeine in ſocage hee ſhalbee compelled to yelde accompt vnto the heire, as wel as his next frende. For it is no plee for him in a writtte of accompt to ſaye that hee is not his nigh frende &c. But he ſhal aunſwere whether he occupieth the landes or tenemẽtes as wardeine in ſocage or not. But enquire if after that the heire haue accompliſhed the age of xiiii. yere and the wardeine in ſocage continually occupieth the lande til the heire commethe to ful age af xxi. yeres. If the heire at hys full age ſhal haue an accion of accompte againſte the wardeine of the time that he hathe occupi-

ed after the saide fourteene yeres, as against his wardeine in socage, or against him as against his bailife.

Also if wardeine in chiualry make his executoures, and dye, the heire beeinge within age &c The executoures shel haue the warde, duringe the nonage. But if the wardeine in Socage make executours and dye the heyre beinge within the age of fowerteene yeares his executoures shal not haue the warde, but an other night krendet wo home the heritage maye not discende, shal haue the ward and the cause of diuersities is for that the warden in chyualrye hath the warde to his proper vse, and the wardeyne in Socage hathe not the warde to his owne vse, but to ỹ vse of the heire. And in suche case where the wardeine in Socage dyethe before anye suche accompte made by him, the heyre is of that withoute remedye, for that no writte of accõpt lieth against the executoures but onely for the kinge.

Also the Lorde of home the lande is holden in Socage after the deathe of his tenaunte, shal haue relefe in suche fourme. If the tenaunte holde by fealtye, and certeine rente to paye yerelie &c. If the tearmes or payemente bee to paye by twoe termes of the yere or by fower termes of the yeare, the Lord shal haue of the heyre of his tenaunte, as muche as the rente amounteth that hee should paye by yeare. As if the tenaunt holde of the

Lorde

Lorde by fealty, and x. shillings of rent, patable at certeine tearmes of the yeare, then the heire shal paye to the lorde tenne shillinges for relefe aboue these tenne shillinges that he shal pay for the rent. Looke more in the statute of an. 19 H. 7. Cap. 15

And in such case after the deathe of the tenãt suche relefe is due to the Lorde incontynent of what age soeuer the heyre bee, for that suche a Lorde maye not haue the warde of the bodye nor the lande of the heire. And the lord in suche case ought not to abide the paymente of his relefe after the tearmes and dayes of paimente of the rent. but he ought to haue his relefe incontinent. And therfore hee maye incontinente distreine after the deathe of hys tenaunte for the relefe. In the same maner it is where a tenaunte holdeth of his Lord by fealtie, and by a pounde of cummyn, or a pound of pepper by the yere, and the tenant dye, the lord shal haue for his relefe a pound of cummyn or a pound of pepper.

In the same manner it is, where the tenant holdeth to pay by yere a certeine number of capons or hennes, or a paire of gloues or certein bushels of wheat. and such other maner thing. But in some case the lorde ought to abyde to distraine for his relefe til a certeine time,

As if the tenaunte hold of his Lord by a rose or by a bushel of roses to paye at the feaste of S. Iohn Baptiste. If such a tenaunt dye in winter, then the Lorde maye not distraine for

his relefe &c. vntil the time that the roſes by the courſe of the yeare may haue theire growinges &c. Et ſic de ſimilibus. Alſo if anye peraduenture will aſke why a man maye not holde of his lorde by fealtye only for al maner of ſeruices, in ſo muche when the tenant ſhal make his fealtye, he ſhal ſwere to his lorde that hee ſhall doe al ſeruices due, and when hee hath made fealty in ſuche caſe there is none other ſeruice due. To this it maye be ſaide ꝑ where the tenante holdeth his lande of his lorde, it behoueth that he oughte to doe his lorde, ſome maner of ſeruice, for if the tenant nor his heires oughte to doe no maner of ſeruice to hys lorde nor to his heire then by longe time continued it ſhoulde be oute of remembrance of whome the lande was holden, of the lorde or of his heire or not, and then more ofter and more ſooner will men ſaye that the lande is not holden of the Lorde nor of his heires then otherwiſe, and vppon this the lorde ſhal loſe his eſchete of the lande, or per caſe other forfaiture or profite that he might haue of the lande. So it is reaſon that the lorde and his heires haue ſome ſeruice done vnto him for a proofe and a witnes that the lande is holden in franke almoigne as ſhalbe ſaid in franke almoigne, and becauſe ꝑ the lorde will not at the begining of the tenure haue anye other ſeruices but fealty, it is reaſon that a man maye holde of his lorde onely by fealty and when he hath made his fealty, he hath done al his ſeruice.

¶ Alſo

¶Also if a man let to an other for terme of lyfe certayne landes or tenementes withoute speakinge of any thinge to yeld to the lessours yet he shal doe to the lessoure fealtie, for that hee holdeth of him. Also if a lease bee made to a man for terme of yeres, it is said the lessee shal doe ỹ lessour fealtye, for that he holdeth of him And this it proued wel by the wordes in a writte of waste, when the lessoure hath cause to bringe a writte of waste againste him the whiche writte shal saye that the lessee holdeth the tenementes of the lessour for terme of yerez So the writte proueth a nature betwene thē &c. but he that is tenant at will after ỹ course of the common lawe, shal not make fealty. bo cause he hath no manner of a sure estate. But otherwise it is of tenante after the custome of the manner, because that he is bounde to do fealtye to his lorde for two causes, on is because of custome, the other is because that he did take his estate in suche fourme to doe fealtye

¶Franke almoigne. ¶Ca. 6.

Tenante in franke almoigne, is where an abbot or priour or another man of religion or of holy churche, holdeth of his lord in Frāk almoigne that is to saye in latine. In liberam elemosinam, that is to saye, in free almes And suche tenure beganne firste in olde tyme when a manne in olde time was seised of landes or tenementes in his demesne, as of fee, & of the

of the same lande enfeoffed an abbote and hys couent, or prior and his couente. to haue and to hold of them and theire successoures in pure and perpetual almes, or in franke almoigne, or by suche wordes to holde of the grantor or of the lessor and his heires in free almes. In such case the tenementes were holden in franke almoigne, and in the same maner it is where ỹ landes or tenementes were graunted in olde time to a Deane And chapter and to their successoures, or to a parsone of a church and to his successours, or to any other man of holy church and to his successors in free almes if he had capacity to take suche grauntes or feoffementes &c. and suche as holde in free almes be bounde of right before God to do orisons, prayers & masses, & other diuine seruices for the soules of the grauntours or feoffours. or for the soules of theire heires which be dead, & for the prosperity & good life of them that be alyue.

¶ And for this they doe at no time no manner of fealtye vnto theire Lordes, for that suche diuine seruice is better for them before god thā anye doing of fealtye, and also these wordes free almes, or franke almoigne, exclude the Lorde to haue anye worldly or temporal seruice, but onely to haue diuine and spirituall seruice to be done for him &c. And if suche that holde their tenementes in free almes or frāke almoigne wil not, or faile to doo suche diuine seruice as it is sayde the Lorde may not distreine them for the seruices vnbone &c. because

reuse it is not set in certaine, what seruice they ought to doo: but the Lord may of ꝯ complaine to their Ordinarye, prainge him that he will set punishement and correctiō of that. And also to prouide and see that suche negligence be no more done, and the ordinary of right ought to do that &c.

¶ But where an abbot or a prioure holdethe of his lord by certaine diuine seruice in certein to bee done, as for to singe a masse euerye frydaie in the weeke for the soules &c. or euerye yeare at suche a daye to singe Placebo & Dirige &c. or to finde a chapleine to singe masse &c. or to distribut in almes to an hūdred poore mē an hundred pēce at suche a daye, in suche case if such diuine seruice be not done the Lorde may destreine &c. for that this diuine seruice is in certeine by there tenure what the abbot or the prioure ought to doo. And in suche case ꝯ lorde shal haue the fealtye &c. as it seemeth.

And suche tenure is not saide tenure in free almes, but it is saide tenure by diuine seruice for in tenure in free almes, or franke almoigne no mencion is made of anye manner certeine seruyce, for none maye holde in free almes or franke almoigne if theire bee expressed anye manner certeine seruice that he ought to doe.

¶ And if it bee demaunded if the tenaunte in franke mariage shal do fealtye to the donoure or to his heires beefore the fowerthe degree be passed &c. It seemeth that yea, for he is not

like

like as to this intente to a tenante in free al
mes or franke almoigne for that the tenant
free almes shal doe, because of his tenure dy
uine seruice for the lorde as it is aforsaide, an
that heeis charged to doe by the lawe of holy
churche, and for that hee is excused and dy
charged of fealtye. But tenante in franke ma
riage doth not by his tenure such seruice.

And if he doe not to his lorde fealtie then he
doeth not to his lorde anye manner of seruic
neither spiritual nor temporall, which shuld
bee an inconuenience and againste reason that
man shoulde haue estate of inheritance of an o
ther, and yet the lorde shal haue no manner
seruice of him as it seemethe, and so it seemeth
that he shal doe fealtye to his lorde before th
foswerth degree bee past &c. And when he hath
done fealtye, he hath done all his seruice. And
if an Abbot holde of his lorde in free almes,
the Abbot and his couent vnder theire cõmo
seale alien the same land to a seculer manne in
fee simple, in this case the seculer man shal doe
fealtie to his lorde for that he maye not holde
of his lorde in free almes, for if the lord ought
not to haue of him fealtye, then hee shal haue
of him no maner of seruice which should bee an
inconuenience where he is lorde, and the tene
mẽtes is holden of him

¶ Also if a man grante at this day to an abbot
or to a priour, landes or tenementes en free al
mes or franke almoigne. these wordes free
almes or franke almoigne bee voyde. for that
it is

it is ordeined by the statute whiche is called Quia emptores terrarum whiche statute was made anno 18. regis E. primi. That noe man maye alien or graunte landes and tenementes in fee simple to holde him self, so that if a man seised of certeine landes or tenementes whiche he holdeth of his lorde by knightes seruice and at this daye he graunteth the same lande to an Abbot &c. in free almes or franke almoigne, the Abbot shal holde immediatlye the same tenementes by knightes seruice of the lorde of his grauntour because of the same estatute so that no man maye holde in free almes or in franke almoigne, but if it bee by title or prescripcion. or by force of a graunte made to some of his ꝑdecessores beefore the same statute. But the kinge may geeue landes or tenementes in fee simple to hold in free almes or franke almoign or by other seruice for hee is out of the case of the statute, and note wel that no manne may holde landes or tenementes in free almes, but of the grauntoure or his heires, and that for ꝑ primitye of the gifte, and therefore it is sayde that if there be lorde mesne and tenante, and the tenant is an Abbot that holdethe of his mesne in franke almoigne, if the mesne die without heire then the menaltye shal come by eschete to the saide Lorde aboue, and the Abbot thā shall holde of him immediatly only by fealty, & shall do him fealtye, for that he may not hold of him in franke almoigne &c.

¶ And note wel where that suche a man of reli-

religion holdeth his landes of his Lord in fre
almes &c. his lorde is bounde by the lawe to a
quite him of euery maner of seruice that any
lord aboue him will demaund or aske of ȳ same
tenantes And if the acquite him not but suffer
him to be distrained &c. thē he shal haue againt
his lord a writte of meine, and recouer his da
mages & costes of his suite.

¶ Homage auncestrel, Ca. 7.

TEnure by homage auncestrell is, where
tenante holdeth his lan of his lorde by ho
mage, and the same tenaunte and his auncestr
whose heire he is hath holden the same lande of
the saide lorde and of his auncesters, whos
heire the lord is from time out of minde by ho
mage, and haue done homage vnto him which
is called homage auncestrel because of the co
tinuance whiche hath bene by title of prescrip
cion in the tenancy, in the bloude of the tenant
and also in the lordshipe in the bloode of ȳ lord
And in such seruice by homage auncestrel draw
weth to him warrantye if the lorde that is s
ipue hath receued homage of suche tenante, h
ought to warrante his tenant when he is im
pleded of the landes holden of him by homag
auncestrel. And also suche seruice by homag
auncestrel draweth to him acquitance, that
is to saye, the Lorde oughte to acquite hys t
nante against al other lordes aboue him of e
uerye manner of seruice. And it is sayd thet if
suche tenaunt be impleded by a Precipe quod
reddat

reddat &c. and hee vouched his lorde to warrantye, whiche cometh in by proceſſe & aſketh of the tenaunte what hee hath to bynde him to warrantye, and hee ſheweth how hee and his aunceſters whoſe heire hee is haue holden the lande of the vouchee and of his aunceſters, whoſe heire he is by homage from time out of minde. if the lorde which is vouched receaueth none homage of the tenante, nor of any of his aunceſters. the lorde then if hee will may diſclaime in the lordſhip, and ſo put out his tenaunte of his warranty. But if the lord which is vouched hath receaued homage of the tēant or of any of his aunceſters, then maye hee not diſclaime, but hee is bound by the law to warraunt the tenante, and than if the tenante leaſe the land in defaute of the vouchee he ſhall recouer in value againſte the vouchee of the landes or tenementes that the vouchee had at the time of the vouche or any time after. And it is to wite that in euery caſe where the lorde may diſclaime in his Lordeſhipe by the law in court of Recorde, and of that will diſclaime his ſeygnioury is extincte, and the tenante ſhal holde of his lorde nexte aboue the Lorde whiche ſo diſclaimeth. But if an Abbot or priour be vouched by force of homage aunceſtrel &c. thoughe he hath neuer taken homage &c. yet he cannot diſclaime in this caſe nor in none other caſe, for they cannot deueſte that thing in fee which hath ybeene veſted in theire houſe. Paſche. 1. E. quarti.

Also

¶ Alſo if a man that holdeth his lande by homage aunceſtrel alyeneth his lande to an other in fee, the alience ſhal do homage to his Lord. But hee holdeth not of his Lorde by homage aunceſtrel for that the tenancy was not continued in the holde of the aunceſtoures of the alienen, nor the alien ſhal neuer haue the warrantye of his lande of his Lorde, for that the cõtinuaunce of the tenancye in the tenaunte and in his bloode by the alienacion is diſcontinued, & ſo ſee that the tenaunte that holdeth his lande by homage aunceſtrel of the Lorde, and ſuche a tenaunte alyeneth in fee, though that he take eſtate of the alyen againe in fee he holdeth the land by homage, but not by homage aũceſtrel.

¶ Alſo it is ſaide, that if a man holde his land of his Lord. by homage and fealtye, & he hath made homage and fealtye vnto his lorde, & the lorde hath iſſue a ſonne, and dieth, & the lordſhippe deſcendeth to his ſonne. In this caſe the tenaunt which did homage to the father, ſhall not do homage to his ſonne, for that when a tenaunt hath made once homage to his lorde, hee is excuſed for terme of his life to make homage to anye other heire of the Lord. But yet he ſhal do fealtye to the ſonne and heire of hys Lorde thoughe that hee made fealtye to his father.

¶ Alſo if the lorde after the homage to hym made by his tenante graunte the ſeruice of his tenant by deede vnto an other in fee, and the

tenant

tenant attornethe &c. the tenaunt shal not bee compelled to do homage but he shall do fealty though hee did fealtie beefore the grauntour, for fealtie is incident to euery attornemẽt whẽ the lordship is graunted. But if a mã be seysed of a manour, and another mã holdeth his lande of him as of the manour afforesated by hõage, ẏ which hath done hõage to his lorde which is seised of the manour if after that a straũger bringe a Precipe qõ reddat againste the lord of the manour & recouerethe ẏ manour against him and sueth execucion &c. in this case the tenant shall once againe doo homage to him that recouereth the manour for that the state of hym which receiued homage before is defeated by ẏ recouery. And it shal not lye in the mouthe of the tenant to falsifye or defete the recouerie which was against his Lorde, also see ẏ diuersitie in this case where a man cõmeth to his lordship by recouery, & where he commeth by discent or grant of the seignory.

¶ And if a man tenant which ought by hys tenure to doe homage to his Lorde cõe to his lorde & say to him, sir I owe to do vnto you homage for the tenemẽts that I hold of you and I am redie to do you hõage for the same tenements for the which I pray you that ye will now receiue it, & if the lord then refuse to receiue it, then after such refuse the Lorde may not distraine the tenant for the homage before that the Lorde require ẏ tenant to doe

homage and the tenant refuse to do it.

¶ Also a man may hold his land by hõage auncestrel & by escuage or by other knightes seruice, aswel as he might hold his lande by homage auncestrel in Socage.

¶ Grand sergeantie. cap. 8.

TEnure by graunde sergeauntie is, wher a man holdeth his lands or tenemẽts of our soueraign lord the king, by the seruice which he ought to do in his owne proper person, as to beare ẏ kinges bannar or his speare or to lead his host. or to be his marshal or to beare his sword before him at his coronacion or to be his sewer at his coronaciõ, or his keruer or butler,, or to be one of his chamberlaines of his resceite of his Escheqr, or to doe suche seruices &c. and the cause wherfore such seruice is called graũd sergeauntie, is for ẏt it is more honorable, & worshipful, & dign thẽ is ẏ seruices of ẏ tenure by escuage, for he ẏ holdeth by escuage, is not limitted by his tenure to do any more especial seruice thẽ any other ẏ doldeth by escuage ought to do. But hee ẏ holdeth by graũd sergeauntie, ought to do especial seruice to ẏ kĩg. But he ẏ holdeth by escuage ought not to do.

¶ Also if the tenant whiche holdeth by escuage die, his heire being at full age, yf hee holde by a knightes fee, the heire shal paye but an C.s. for his relefe, as it is ordeined by statute of Magna charta cap. 1. but he ẏ holdeth

deth of the kinge by graunde sergeauntie and dieth his heire being of full age, shal pay vnto the kinge for his relefe the value of hys landes or tenemētes by yeare, beside the charges and repriſes which he holdeth of ỹ kīg by graund sergeantie: And it is to weete that sergeauntie in latin is seruicium, & of magna serjantia is magnū seruicium, ỹ is to saye a great seruice.

¶ Also those which hold by escuage ought to doe their seruice out of the realm. but they that holde by graund sergeauntie for ỹ moſt parte oughte to doe theire seruice within the realme.

¶ Also it is saide ỹ in ỹ Marches of Scotlande some helde of the kinge by coznage ỹ is to saye to blowe an hozne for to warne ỹ men of the countrey &c. when the yeare that the Scots or other enemies will cōe or enter into England &c. which seruice is graund sergeaūtie &c. but if any tenāt hold of any other lozd thē of ỹ king by such seruice of coznage ỹ is not graund sergeantie, but it is knights seruice, & dzaweth to him ward, mariage, & relefe, for none may holde by graūd sergeantie but of the king onely.

¶ Also a man may see in the xi. yere of Hēry the fowerth that Cokaine thē beeinge chiefe Barron of theſcheqner came into the cōmon place bringing withe him a copie of a recozd in these wordez. Talis tenet tantam terrā de domino rege per ſerjantiam ad inueniendum

vnum hominem ad guerrā infra quatuor ma
ria &c. That is to ſaye ſuch a manne holdeth
ſo much lande of our ſoueraigne lord the kīg
by ſergeantie to warre within ỹ ſower ſeas
& he demaunded whether it was graūde ſer
geauntie or petite ſergeantie, and Hank then
ſaid that it was graund ſergeantie, for that
it was ſeruice to be done by the body of a mā
and if that he may not find a man to doe the
ſeruice for him hee muſt doo it him ſelfe. To
whōe the other iuſtices aſſented. Coken thē
ſaide the tenaunt in this caſe ſhall pay reyef
to the value of the lande by yeare to ỹ whiche
was none aunſwer, & note that al they that
holde of the king by graund ſergeantie, holde
of the king by knightes ſeruice, and the kinge
of that ſhal haue warde mariage & relief but
ỹ king ſhal not haue of them eſcuage if they
holde not by eſcuage.

¶ Petite ſergeaunty. cap. 9.

TEnaunt by petite ſergeaunty is where a
manne holdeth his lād of oure ſoueraigne
Lorde the kinge to yeelde vnto him yearely a
Bowe, a ſwoorde or a dagger, or a knyfe or
a ſpeare, or a payre of gloues of Maile, or a
pair of ſpurres gilt, or an arrowe or diuers
arrowes or to yelde ſuch other ſmall thinges
touchig ỹ warre & ſuch ſeruice is but ſocage
in effect for ỹ that the tenaunt by his tenure
ought not to goe nor to doe any thinge on his
owne

done ꝓperperſon touchinge ꝯ warre. But to yelde and pay yerely certain thinges vnto the king as a man ought to paye a rēte. And note that no man holde lande by graunde ſergeauntie nor by petite ſergeauntie but of the kinge.

¶ Burgage. Cap. 10.

TEnure in Burgage is where an auncient Borough is, of ꝯ which ꝯ kinge is Lord and they that haue tenementes within the Borough holde of the king their tenementes ꝯ euery tenant for his tenement ought to paye to the kinge a certaine rente by yeare ꝛc. And ſuch tenure is but tenure in ſocage, and the ſame manner is where an other lord ſpirituall or tempoꝛal is Lorde of ſuch a boꝛoughe, & the tenantes of the tenementes in ſuch a boꝛough hold of theyr Lord to pay eche of thē yerely an annuell rent, and it is called tenure in Burgage, for that the tenements within the boꝛough be holden of the Lorde of ꝯ boꝛough by certayne rente ꝛc. And it is to wete that ꝯ auncient townes called Boꝛoughes bee the moſt auncient and eldeſt Townes that bee within England, for the townes that now be cityes or counties, in olde time were boꝛoughs and called boꝛoughes for of ſuch olde townes called boꝛroughes cāe theſe burgeſes of the Parliamēt to ꝯ Parliamēt whē ꝯ king hath ſommoned his Parliament.

¶ Also for the greater part suche boroughes haue diuers customes and vsages which be not had in other Townes, for some borough hath such custome that if a man haue issue of many sonnes and dieth, the yongest sōne shall inherite all the tenemētes which were his fathers within the same borough as heire vnto his father by force of the custome, the whych is called borough Englishe.

¶ Also in some boroughes by the custōe the wyfe shal haue for her dower all the tenemēts which were her husbands.

¶ Also in some borough by the custome a mā may deuise by his testament his lands & tenementes which he hath in fee simple within the same borough at the time of his deathe & by force of such deuise he to whō such deuise is made after the deathe of the deuisour, may enter into the tenemēts to him deuised to haue and to hold to him after the fourme & effecte of the deuise without any liuery of seisin ther of to be made to him.

¶ Also though a man maye not grant nor gyue his tenementes to his wife during the couerture, for that that his wife & he be but one person in the lawe, yet by such custōe he may deuise by his testament his tenementes to his wife to haue and to holde to her in fee simple or in fee taile, or for terme of life or of yeares, for ỹ such deuise taketh none effecte but after ỹ death of the deuisor. And if a man at diuers times make diuers testamētes & di

uers

uers deuiſes &c. yet ỹ laſt deuiſe & will made by him ſhal ſtande and abide.

¶ Alſo by ſuch cuſtõe a man maye deuiſe by his teſtamẽt that his executours may aliene and ſell the tenements that he hath in fee ſimple for a certayne ſũme to diſtribute for the ſoule, in this caſe though ỹ deuiſour die ſeyſed of the tenements, & the tenementes deſcend vnto his heire, yet the executours after ỹ deathe of the teſtatour may ſell ỹ teneműtes ſo deuiſed and put out ỹ heire & therof make a feoffement, alienacion. & eſtate by deede or without deede. to them to whome the ſale is made vnto.

¶ And ſo maye ye ſee here a caſe where a man may make a lawfull eſtate, and yet hee hath nought in the tenements at the time of the eſtate made & the cauſe is for that, that ỹ cuſtome and vſage is ſuch Quia conſuetudo ex certa cauſa rationabili vſitata priuat communẽ legem. For a cuſtome vſed vppõ a certaine reaſõable cauſe. barreth the cõmõ lawe Alſo note well, no cuſtome is to bee allowed but ſuch cuſtome as hath ben vſed by title of preſcription, that is to ſay, from tyme wherof is no mind, But diuers oppinions haue ben of time out of minde & of title of p̃ſcription which is al one in ỹ law, for ſõe mẽ haue ſaid ỹ the time of minde ſhalbe ſaide for tyme of limitation in a writte of right, that is to ſaye frõ the time of kinge Richarde the firſt after the Conqueſt, as is gyuen by the Statute of

weſtminſter ꝑ firſt. for that a writte of right is the moſt higheſt writ in his nature ꝑ maye bee. And in ſuche a writ a man may recouer his right of ꝑ poſſeſſion of his auncеſters of ꝑ moſt auncient time that any man may by any writ by ꝑ lawe. And in ſo much that it is geuen by the ſaid eſtatut. that in ſuche a writte none ſhalbe heard to aſke of the ſeiſon of hys auncеſters of moze longer time then of ꝑ time of kinge Richard afozeſayd, therefoze this is pzoued that continuance of poſſeſſiō oz other cuſtomes and vſages vſed after ꝑ ſame time is title of pzeſcription, & this is certein. And other haue ſaid that well and truth it is that ſeiſin and continuance after the limitacion &c is a title of pzeſcripciō as is afozeſayd and by the cauſe afozeſaid. But the haue ſaide that there is alſo an other title of pzeſcription that was in the cōmon lawe befoze any eſtatut of limitacion of writs &c. & that it was when a cuſtome oz vſag oz other thing had bene vſed foz time wherof minde of mā runneth not to the contrarye, and the haue ſaide ꝑ this is pzoued by the pleding where a man will pleb a title of pzeſcription of cuſtome &c. he ſhall ſay that ſuch cuſtōe hath beene vſed frō time whereof the memozy of men runneth not to ꝑ cōtrary, that is as much to ſaye, when ſuch a matter is pleded that no mā thē altue hath hearde one pzoofe to the cōtrary, noz hath no knowledge to the contrary, and in ſo much ꝑ ſuche title of pzeſcription was at the cōmon

lawe

law and not put out by any estatute. Ergo it abideth as it was at the common law, & the sooner in so much that the saide limitacion of a writte of right &c. is of so long time passed. Ideo quere de hoc, & manye other custõs & vsages haue such auncient boroughes.

¶ Also euery borough is a towne, but not to the contrarye, more shalbe saide of customes in the tenure of villenage.

¶ Villenage. Cap. 11.

TEnure in villenage is most pperly when a villayne holdeth of his Lorde to whõ he is villaine certein landes & tenementes after the custome and maner or els at the will of his Lorde and to do his villayne seruice, as to beare, bring, and carie out ẏ donge & filth of the lord vnto the lãd of his lord ther to lay it, cast it, and spreade it abrode vpon the land, and to do such other maner of seruice & some free tenantes hold their tenementes after the custome of certeine manoures by such seruice, & their tenure is called tenure in villenage, & yet they be no villaynes, for no land holden by villenage or villeine lands, or any custome rysinge of the land shal neuer make free mã villein. But a villain may make free lãd to be villein lãd vnto his lord, as if a villayne purchase lãd in fee simple or in fee taile the lord of the villain may enter into the lãd & put out the villain & his heires for euer, &

after

after the lord if he will he may let ỹ same land to the villein to hold in villenage.

¶ Also if a feoffement be made to a certaine persō or persōs in fee to the vse of a villeine, or if a villaine or any other persōs bee ēfeoffed to the vse of a villein, what estate soeuer the villaine hath in the vse, in fee taile, for terme of life or yeres, ỹ lorde of the villeyne may ēter in al those lands & tenemētes likewise as if ỹ villeine had bene alone seysed of ỹ demeine. And ỹ is by ỹ statute of Anno 19. H. 7. But if a free mā will take any lāds or tenementes of his lord by such villain seruice, ỹ is to say, to paye a fyne to his lorde for his maryage, or for ỹ mariage of his sōne or his daughter, then shall he pay suche a fine for the mariage &c. for that it is the folly of such a free man to take in such fourme lands or tenementes to holde of his Lord by such bondage, yet that maketh not the free man villayne.

¶ Also. euery villaine, eyther he is villain by prescription, that is to say. he & his auncesters haue bene villaines time out of mind or he is a villain by his own cōfessiō in court of recorde. But if a free man haue diuers issues, and after confesseth him selfe to be villain to another in court of recorde, yet his issues which he hath before ỹ cōfessiō be free but ỹ issue which he shal haue after ỹ cōfessiō &c. shalbe villains.

¶ Also if a villayne purchaseth landes & alyeneth

neth ỹ ſame lands to another before his lord enter, thē the lord may not enter for it ſhalbe iudged his owne folly that he entred not whē the lande was in his villeyns hands. And ſo it is of his other goods, for if the villein buie & ſell, or gine goods to another before that ỹ lord ſeaſeth the goodes, thē the lorde may not ſeaſe thē, but if the lord before any ſuch ſale or gift commeth within the houſe of the villaine where ſuch goods be, & there openly among ỹ neighboures clayme the ſame goods to be his, & ſeyſeth parcell of the ſame in name of ſeyſin of al ỹ goodes &c. This is ſayd a good ſeyſin in the lawe. and the occupation that ỹ villain hath after ſuch claime in ỹ goodz ſhal be taken in the lawe in the right of the lord.

¶ But if the king haue any villain that purchaſeth lands & alieneth before that the king enter, yet the King, may enter in the lande in whoſe handes the land commeth to. Or if ỹ villaine buy or ſell diuers goods before that the king ſeyſe the goodes, yet the king may ſeyſe them in whoſe hands that euer they be. Quia nullū temp⁹ occurrit regi. for no time renneth againſt the king.

¶ Alſo if a man let land to another for terme of life ſauing the reuerſion to him and a villayne purchaſeth of the leſſoure the reuerſion, in this caſe it ſeemeth, that the lorde of the villaine maye incontinent come to the lande and clayme the ſame reuerſion as lord of the ſame Villaine. and by thys clayme

the

the reuersiō is incontinent in him, for in any other fourme he may not cōe to the reuersiō for he may not enter vpō the tenāt for terme of life, & if he ought to auoyde tyll after the death of the tenant for terme of life, thē happely he might come to late, for peraduenture ỹ villaine will grant or alien it to an other in the life of the tenant for terme of life. In the same maner it is where a villeine purchaseth the auowson of a Church ful of an incūbent that the Lorde of the villeine maye come to the saide Churche and clayme the aduowson And by this clayme the aduowson is in him for if hee abyde tyll after ỹ deathe of the incūbent and then presente his clarke to the saide Churche: then in the meane time the villaine mighte aliene the auowsō &c. and so put out the Lord from his presentacion.

¶ Also there is a villeyn regardant & a villaine in grosse. Villayne regardaunt is as if a man be seised of a manour to whiche a villain is regardaunt, & hee that is seised of the saide manour, or they whose estate he hath in the same manour haue bene seised of the saide villain & of his aūcesters as villains regardaunt to the manour from time out of mind. And villain in grosse is where a mā is seised of a manour to the which a villayne is regardaunt, hee graunteth the same villayn by his deede vnto another, thē he is villain in grosse and not regardaunt.

¶ Also if a manne and his aunceſters

whoſe

whose heire hee is hath beene seised of a villayne and of his anncestoures as villayne in grosse time oute of minde suche beene villaynes in grosse. And note well that of such thinges which may not bee graunted nor ayened without deede or fyne a manne that will haue such thinges by prescripcion maye not otherwise prescribe but in him and hys anncesters whose heire he is and not by these woordes in him and in those whose estate he hath for that ꝑ hee may not haue theire estate without deede or writing ꝑ which behoueth to bee shewed to the court if he will haue any auantage of this & because that the grante and the alienacion of a villayne lyeth not ꝛ but deede or other writing. A man maye not prescribe in a villein in grosse withoute shewing of writing but in him selfe that clayneth ꝑ villain & in his aūcesters whose heire hee is. But of those thinges which be regardaunt or appendant to a manour or to other landes or tenementes, a man maye prescribe hathe and they whose estate hee hath were seised of the manour or of such landes or tenementes as regardauntes or appendauntes to the manour or to such landes and tenemētes &c. from time out of minde, and the cause ys for this that such a manour lands and tenementes may passe by alienacion ꝛout deede &c. And it is to witte that nothinge is named regardant to a manour but a villeine, But certaine other thynges as auowsons and

communs-

commune of pasture &c. be named appendes to the manour or to other landes & tenementes.

¶ Also if a man in court of record knowledge himselfe to be villeine that neuer was villeine beefore. suche one ys villeine grosse.

¶ Also a man that is villeine is called villein, and a woman that is villein is called nief. and a man that is outlawed is called outlaw, and a womā that is outlawed is called a wayue,

¶ Also if a villein take a free womā to wife the issue betwene them shalbe villaines. & if a nief take a free man to husband, theire issue shalbe free. And that is contrary to ꝯ ciuil, for ther he sayeth that partus sequitur ventrem.

¶ Also no bastard may bee villeine, but if he will knowledge him selfe to be a villein in court of record, for he is in the law quasi nullius filius as the sonne of no man, for that may be inheritour to no man.

¶ Also euerie villeine able and free to sue maner of actiōs against euery person except against his Lorde to whome he is villein and yet in certaine thinges hee may haue against his Lorde an accion of appelle for the deathe of his father or of his other aūcestre whose heire hee is, also a nief whiche is ravished by her Lord may haue appele of rape against him.

¶ Al

¶ Also, if a villeine bee made executoure to another, and the lorde of the villeine was indebted to the testatour in a certain summe of money the which is not paid, in this case the villein as executoure to ỹ testatour shall haue an acciõ of debt against his lorde because hee shal not recouer ỹ debt to his ppre vse, but to ỹ vse of the testatour.

¶ Also, the lorde may not take out of the possession of such a villein that is executour of the deads goods and if he doo the villeine as executour shal haue an accion of Trespas against his lorde for the same goodes so take and recouer damages to the vse of the testatour, But in al these cases it behoouethe the lord which is defendãt in such accions to make protestation that the plaintife is his villein, or els the villein shalbe frãchised though the matter be found for the lorde against the villein, as it is said.

¶ Also, if a villeine sue an action of trespas or other action against his Lorde in one shire, and the Lorde saythe that he shall not bee aunswered for that hee is villeine regardaunt to his Manour in another shere, and the plaintife sayethe that hee is franke and of free estate and noe villeine this shall bee tried in the shire wheare the plaintife hathe conceyued his accion, and not in the shire where the Manour is, and this is in fauor of libertie, as it is adiudged m.40.e.3

And

And for this cause was made a statut in the
ix yere. of Richard the second, the tenure of
which ensueth in such forme.

¶ Also for that where manie villaynes &
nyfes as well of great lords as of other folk
spirituall & temporall flee and go into cityes
and places franchised as the city of London
and other like places, and faine diuers suites
against their lords because they would make
them selfe to be enfraūchised it is accorded &
assented that ỹ Lordes nor none other shall be
forbarred of theire villaines because of their
aunswere in the law. by force of whiche sta-
tute yf any villaine will sue any maner of ac-
cion to his owne vse in any shiere wher it is
hard to trye &c. againste his lorde his Lorde
may chose to pleד that the plaintife is his vil-
layne and to plede another matter in barre &
if they be at issue and the issue bee founde for
the Lord, then ỹ villain is villein as he was
before by force of the same statut, But if the
issue bee founde for the villein then is the vil-
lian frank and free for that the lorד toke not
for his plee ỹ the villein was his villayn but
tooke it by protestacion.

¶ Also the Lorde maye not mayme his
villayne, for if hee mayme his villein he shall
of that bee endyted at ỹ kinges suite, And if
hee be of ỹ attainted hee shal for that make
greeuous fine and raūsome to the king. But
it seemeth that the villein shall not haue by ỹ
law

lawe anye appelle of maime against his Lord for in appelle of mayne a man shall not recouer but his dammages. And if the villeine in that case recouer dammages against hys lord and hath thereof execucio, the Lord may take that that the villaine hathe in execucion from the villaine, and so the recouerye standethe voide.

¶ Also if the villaine be demaundant in an accion real or plaintife in an accion personell against his lorde if the lorde will plede in dysabilitye of his persone, hee may not make plaine defence, but he shal defende but the wronge & ẏ force and demaunde iudgement if he shalbee aunswered and shewe his matter by & by who he is villaine & demaunde iudgement if he shal be aunswered.

¶ Also sixe manner of men there be against whom if the sue actions &c. iudgemente maye bee asked if they shalbee aunswered. One is where the villaine sueth an accion &c. against his lorde as in case afore saide. The seconde is where a man outlawed vppon an accion of Debt or Trespas or vpon any other accion or inditemēt, the tenaunte or the defendaunt may shewe al the matter of the recorde and the outlawrye and demaunde iudgement if hee shalbe aunswered because that hee is out of the lawe to sue any accio during the time that he is out lawed. The thirde is where an alyen borne out of the allegeance of our soueraigne lorde ẏ kinge, yf suche alien sue anye accion reall or

perſonall, the tenaunte or defendaunt may ſaye ꝑ he was borne out of the kinges allegeance, & aſke iudgement if he ſhalbee aunſwered. The foweꝛth is where a man by iudgement geuen againſte him vpon a writte of Premunire fac̃ &c. is out of the kings ꝓtection if he ſue any accion and the tenaunte or defendaunt ſhewe al the recorde againſt him, he may aſke iudgement if he ſhalbe aunſwered, for ꝑ law and the kinges writtes ben the thinges by which a mã is ꝓtect & holpen & ſo during the time ꝑ a mã in ſuche caſe is out of the kinges ꝓtection he is out of helpe & ꝓtect by ꝑ kings law or by the kinges writte.

¶ The fifte is, where a man is entred and profeſſed into religion, if ſuch a perſon ſue an accion, the tenant or defendant may ſhew that ſuche one is entred into religion in ſuch a place into the order of Saint Benet, and is there a monke profeſſed or in the order of fryers mynoures or preachers, and is there a fryer profeſſed, and ſo of other orders of religion &c. & aſke iudgement if he ſhalbee aunſwered, & the cauſe is this, that when a manne entreth into religion and is profeſſed, he is dead in the law and his ſonne or nexte coſine incontinent ſhall inherite him alwel as thoughe he were deade in deede and when hee entreth into religion, he maye make his teſtament and his executors, & they maye haue an accio̅ of debt due to him before his entre into religion or anye other acty on that executoures may haue if he were dead

in deede

in deede. And if he make none executors whe he entreth into religion. than the ordinary may commit the administracion of his goodes to o-ther as if he were dead in deede. The sixte is where a man is accursed by the lawe of holye Churche, and he sueth an accion real or perso-nal, the tenant or defendaunt maye plede that he that sueth is accursed, & of this it behoueth him to shewe the Bishopes letters vnder his seale, witnessing the accursinge and assoyl-ment if he shalbe aunswered &c. but in this case if the demaundante or plaintife cannot deny it the writte shal not abate, but the iudgemente shalbee that the tenante or defendant shall go quite without daye for this, that when the de maundante or plaintife hath purchased his let ters of absolucion & shewed them to the courte he may haue a resommons or a reattachement vpon his original after y nature of his writ &c. But in the other cases the writte shal abate &c. If the matter shewed may not bee gayne-saide.

¶ Also if a villain be made a seculer preiste, yet his lorde maye seise him as his villeine & seise his goodes &c. But it seemeth ẏ if ẏ villein en ter into religiō & is professed &c. ẏ ẏ lord may not take him nor seise him for that he is dead in the lawe. And no more thā if a free mā may ta ke a wife to his wife ẏ lord may not take ne lease the wife of the husband. But his remedy is to haue an accion againste ẏ husbande for ẏ hee tooke his wife to wife withoute his will

and so may the lord haue an accion againste the soueraign of the house that taketh and admitteth his villeine to be professed in the same house without licence and wil of his Lorde &c. and shal recouer his dammages to the value of ꝯ villaine, for he that is professed monke &c. shalbe a monke, and as a monke shalbe taken for terme of his life natural, except he be derained by the lawe of holye churche, & hee is holden by this religion to keepe his cloister, and if the lorde may take him out of his house than hee should not liue as a dead person, nor after his religion which shoulde bee incōuenient &c, For if there be wardein in chiualrye of body and of landes of childe within age, if the child when he commeth to the age of xiiii. yeres enter into religion & is professed, the wardeine hathe none other remedy as to the warde of ꝯ bodye, but a writte of · Rauishement of warde against the soueraigne of the house. And if anye being of ful age that is cosin and heire vnto the child enter into the lande, the wardeine hath no remedy as to the warde of the lande, because that the entre of the heire of the childe is lawful in suche case.

¶ Also in many diuers cases the Lorde maye make manumissiō and in fraunchisinge to his villaine, Manumission is properlye when the Lorde maketh his deede to his villeine to enfranchise him by this woorde Manumittere, whiche is as much to say, as extra manū, & extra potestatē alteri⁹ ponere, as to put him out of the

of the handes and the power of another, And for this that by such a dede the villaine is put out of the hande & power of the lorde, it is called manumission. And so euery manner of enfraunchisinge made to a villaine, maye be saide a manumission. Also if the Lorde make to his villaine an obligacion for a certaine summe of money, or graunte vnto him by his deede an annuitie, or let him by his deede, landes or tenementes for terme of yeres, the villayne is enfraunchised. Also if the lorde make a feoffement to his villaine of any landes or tenementes by deede or without deede in fee simple or fee taile. or for terme of yeares, and deliuereth vnto him the seisin. this is an infraunchysinge, but if the Lorde make to him a lease of landes or tenementes to holde at the will of the lorde, by deede or without deede, thys is no fraunchisinge for that he hath no maner of certaintye nor suertye of his estate, but that ỹ Lorde maye put him out when hee wil. Also if a lorde sue againste his villaine a Precipe q reddat if he recouer or bee nonsute after appearaunce this is a manumission for this that hee maye lawfullye enter into the landes without suche suite. In the same maner it is if he sue againste his villaine an accion of Debte. or of accompte or of couenante, or tresp as. or suche other, this is an infraunchisinge &c. for this that he maye enpryson his villaien, & take his goodes without suche suite. But if the lord sue his villaine by appeale of Felonye, this is

none enfranchising to the villaine thoughe the matter of the appel is found against the Lord bicause that the lorde may not haue the villain hanged without such suite. But if the villaine were not endited of the same felony before the appelle sued againste him and is acquited of ỹ felony, so that he recouer damages againste ỹ Lorde for the false appeale. And in this case the villayne is enfraunchised bycause of the iudgmente of dammage that was giuen to him against his Lord. And more cases and matters there be by the which a villaine may be enfrañchised against his Lorde. Sed de illis quere. Also if a lorde of a mannor will prescribe that it hath bene accustomed within his mannoure time out of minde that euery tenaunt within ỹ same manoure that marieth his daughter to any man without licence of the lord of the manour shal make fine to the lorde for the time being, this prescripcion is void, for none ought to make suche fines but onelye villaines, for euerye free man may freely mary his daughter to whome it pleaseth him & his daughter. And because that this prescripcion is againste reason such prescripcion is voide, But in the shyre of Kent of landes holden in Gauelkind where by the custome and time out of minde the childrē males ought euenly to enherite, this custome is allowable, for this that it is with some reason bicause that euerye sonne is as great a gentleman as the elder sonne, and bicause of ỹ, to more great honour and valure shal growe thē

at he

ſ he had nothinge by his auncestours, where peradueuture he might not ſo growe &c.

Also where by custome called borough Englishe, in some borough ꝑ yongest sonne shal inherite al the tenementes &c. This custome also standethe with reason because ꝑ the yonger sonne if he lacke father & mother because of his yong age, may least of al his brethren help him selfe &c. But if a man wil prescribe that if any cattel were vpon the demeines of his manor ther doinge damage, that ꝑ lord of ꝑ manor for ꝑ time beinge hath vsed to distreine them & the distres to reteine til fine were made to him for the dammages at his will, this prescripcion is voide, because it is againste reason ꝑ if wronge be done to a man ꝑ he therof should be his own iudge, for by suche way if he had damages but to ꝑ value of an halfe peny he might assesse & haue therof an C.li. which shoulde be against al reason, and so such prescripcion or any other prescripcion vsed if it be againste al reason this ought not nor wil not be allowed before iudges. Quia malus vsus abolendus est.

¶Rentes. Cap. 12.

THree maner of rentes there bee, that is to saye, rent seruice, rent charge, and rent secke Rent seruice is, where a man holdeth his lāde of his lorde by fealtye and certaine rent or by other seruice and certaine rent,

¶Or by homage, fealtye, and certaine rente.

And if rent ſeruice at any day that it oughte to be paid be behind the Lord maye diſtreine for that of common righte. And if a man now will geue landes or tenementes to another in the taile, yeldinge to him certaine rent by yere hee of common right maye diſtraine for the rent behinde thoughe ẏ ſuch gifte were made without a deede becauſe ẏ ſuche rente is rent ſeruice, but in ſuche caſe where a man vppon, ſuche a gifte or leaſe will receiue to him rente ſeruice, it behoueth that the reuerſion of the landes and tenementes be in the donour or in the leſſour, for if a man will make a feoffement in fee or will geeue landes in the taile, the remaynder ouer in fee ſimple without a deede, reſeruinge to him certaine rente ſuche reuerſion is voide, becauſe that no reuerſion is in ẏ donor and ſuche a tenante holdeth his lande immediate of the lorde of whom his donour helde. And this is by force of the eſtatute of weſtm̃ 3 Cap. 1. Quia emptores terrarum. For before the ſame eſtatute if one had a feoffement in fee ſimple by deede or without deede, yelding to him and to his heires certaine rente this was rent ſeruice, and for this he might diſtreyne of common righte. And if he made no reuerſiõ of anye rente nor of anye ſeruice yet the feoffee helde of the feoffoure by ſuche ſeruice as the feoffor held ouer of his Lord next aboue. But if a man by deede inuented at daye, make ſuch a gifte in the taile, the remainder ouer in fee &c. or feoffemente in fee, and by the ſame inden

ture

me reserueth to him and to his heires a cer-
taine rente, and that if the rent be behinde that
it shalbe lawful to him & to his heires to dys-
traine &c. such rent is rent charge because such
landes and tenementes bee charged of such dis
tresse by force of the writinge onely and not of
common right. And if such a man in such a dee
de entended, reserue to hym and to his heires
certaine rente without anye such clause sette
or put in the deede that he maye distreine &c.
ỹ suche rent is rent secke, because that he can-
not distraine to haue the rent if it be denied by
ỹ same distres and if he were neuer seised in
this case of the rent, hee is without remedie as
shal be said hereafter. Also if a man seised of cer
tayne lande graunte by his deede Polle, or by
endenture, a yerely rent issuinge out of ỹ same
lande to another in fee simple or in fee tayle, or
for terme of life &c. withe clause of distres &c.
then that is rent charge, and if it bee without
clause of distresse, then it is rente secke, and
note wel that rent secke idem est quod reddi-
tus siccus, and for that, that no distresse is in
cident to it. Also if a man graunt by hys dede
to another and the rent is behinde, the graun
tee may choose if he wil sue a writ of Annui-
tie of it againste the grauntoure, or distrain for
the rent behind, & the distresse to with hold tyl
he bee of that paide. But he may not doe and
haue bothe together, for if he take a writte of
Annuitie, then ỹ lord is discharged. And if he
sue not a writte of annuitye, but distraine for ỹ
arrera-

arrerages, & the tenant sueth a Replegiare &
& the graunte auoweth the takinge of the di-
tresse in the lande &c. in court of record, then is
the lande charged and the person of the graun-
tor discharged for an action of annuitie.

¶ Also, if a man will that another shal have
rente charge issuinge out of the landes but he
wil not that his personne shalbee charged in
manner by a writte, of annuitye, then hee may
haue such a clause in the ende of his deed, Pro-
uiso semp quod presens scriptū, nec aliquid in
eo specificatum, non aliqualiter se extendat ad
onerandum personam meam per breue de annu-
ali redditu. Sed tantummodo ad onerandum
terram et tenta prēd de annuali reddittu prēd.
And then is the lande charged, & the parson of
the grauntor discharged.

Also, if a man make suche a deed in such ma-
ner, ꝑ if I.B. be not perely paide at the feaste
of Chrystmas for terme of life of xx. s. of lawe-
ful money, that then it shalbe leeful to the said
I.B. to distreine for it in the Mansuze of F.
&c. this is a goood rent charge, because that ꝑ
maunoure is charged of the rente by waye of
distresse. And yet the persone himselfe ꝑ made
suche a deede is charged in this case of an ac-
cion of annuitie, because ꝑ he graunted not by
his deede any annuitye to the saide I.B. but
graunted onely that he maye distraine for his
annuitye.

¶ Also, if a man haue a rent charge to hym
and to his heires issuing out of certaine lande

if hee

the purchase anye parcel of the lande to hym and to his heires.al the rentes is extincte and annulled because the rent charge maye not in suche maner bee appoꝛcioned,but if a man hathe rent seruice purchase parcel of the lande whereof the rent is, this shal not extincte all, but foꝛ the poꝛcion,foꝛ the rent seruice in such case maye bee appoꝛcioned and shalbee appoꝛcioned after the value of the lande, but if a tenaunte holde his lande by seruice to yelde to his loꝛde yerely at suche a feaste an hoꝛse, oꝛ an hauke,oꝛ suche thinge semblable,if in suche case the Loꝛde purchase parcell of the land,the seruice is gone.bycause that such seruice maye not,be seuered noꝛ appoꝛcioned,but if a manne holde his lande of another by homage,fealtye and escuage,and by certayne rente if the Loꝛd purchase parcell of the lande &c. In that the rente shalbe appoꝛcioned as is afoꝛesaide, but yet in this case the homage and fealty abidethe whole to the Loꝛd, foꝛ the Loꝛde shall haue the homage and fealtye of his tenaunt foꝛ the remenante of landes and tenementes holden of him as he hadde befoꝛe &c, foꝛ this that suche seruices be no annuel seruices,and maye not bee appoꝛcioned. But the escuage maye & shal bee appoꝛcioned after the quantitye and rate of the lande.

Also if a man haue a rent charge, and hys father purchaseth parcel of the tenemẽts charged in fee and dieth and that parcell dyscendeth to his sõne that hath the rent charge.now

this

this rente charge shalbe appoꝛcioned after
ye value of the lande, as is afoꝛesaide of rent
uice because that suche a poꝛcion of the lād
chased by the father, commeth not to the so
by his owne deede, but by discente and co
of the lawe.

¶ Also if there bee Loꝛde and tenaunt, and
tenaunte holdeth of his Loꝛde by fealtye
certaine rent, and the Loꝛde grauteth the
by his deede to another &c. reseruinge to
the fealty, and the tenant attourneth to ẏ gr
tee of the rent nowe suche rent is rent seck
ẏ grauntee for this that the tenementes be
holden of that grauntee of the rent but be
den of the loꝛde that receaueth to him fealt
And in the same maner it is where a man
dethe his lande by homage, fealtye and cert
rent, if the loꝛde graunte ẏ rent sauinge to
the homage, such rent after such graunt is
secke, but where landes oꝛ tenementes be
holden by homage, fealtye, and certaine rent,
the loꝛde wil graunte the homage of his lan
by his deede to another, sauinge to him ẏ re
menante of the seruices, and the tenante attor
neth to him after the fourme of the graunt
nowe in this case the tenante holdeth his lan
of the grauntee, and the loꝛd that graunteth
homage shall not haue but the rent as rent
secke, and shal neuer distraine foꝛ the rente fo
this, that nether homage, noꝛ fealtye, noꝛ escu
age may bee saide secke, foꝛ he ẏ hath oꝛ ought
to haue of his tenante homage, oꝛ fealtye, and

escuag

escuage may or common righte distraine for yt
if it bee behinde, for homage. fealtye & escuage
beene seruices by which landes and tenemētez
bene holden. and bene suche that in maner may
be takē but as seruices. But otherwise it is of
rente that was once rent seruice for thys that
when it is seuered &c. by the graunt of ŷ lorde
from the other seruices, it may not be saide rent
seruice for this ŷ it hath not to it fealtye which
is incident to euerye maner of rent seruice, and
for this it is saide rent seck.

¶ Also if a man let lande to another for terme
of life, reseruing to him certeine rent. if hee
graunte the rent to another saunge to him the
reuersion of the lande so letten by his deede &c.
suche rente is but rent secke, for this that the
grauntee hath nothinge in the reuērsion of the
land. But if he graunt the reuersion of ŷ lande
to another for terme of life and the tenaunt at-
tourneth &c. then hath the grauntee the rente
as rente seruice because he hathe the reuersion
for terme of life. And so it is to bee vnderstand
that if a man geeue landes or tenements in the
taile, reseruing to him and to his heires cer-
taine rent or lette lande for terme of life reser-
uing certeine rente if he graunte the reuersion
to another, and the tenaunte attourneth al the
rente and seruice passeth by the woorde of the
graunte of reuersion for this that al the rente
and seruice in suche case bee incidentes to the
reuersion and passe by the graunte of reuersi-
on. But though he graunt the rent to another

the reuersion passeth not by such graunte &c. And so note wel the diuersitie. And so it is holden Paschę xii. E. quarti. But it is adiudged an xxvi. lib. Assisarum where as the seruices of the tenant in taile were graunted that ỹ was a good graunt yet notwithstandinge ỹ reuersion remaines.

¶ Also if there bee Lorde mesne and tenaunt and the tenaunt holdeth of the mesne by ỹ rent of fiue shillings, and the mesne holdeth ouer by twelue pence, if the lorde aboue purchase ỹ tenancy in fee, then the seruice of the menalty is extinct for this that when the lorde aboue hath the tenauncy, hee holdeth of the Lorde nexte aboue him. And if hee oughte to holde it of him that was mesne then hee shoulde holde one selfe tenauncye, immediatlye of dyuers Lordes which shoulde bee inconuenient, and the lawe will sooner suffer a mischiefe than an inconuenience, and for this the seignioury of the menalty is extincte. But in so muche that the tenaunt helde of the mesne by fiue shillings and the mesne helde but by xii. d. so that he had more auantage by iiii. s. then he payde to hys Lorde hee shal haue the saide iiij. s. as a rente secke perely of the lorde that purchaseth the tenancye.

¶ Also if a manne that hathe rente secke is once seised of anye parcell of the rente and after if the tenaunt will not paye the rente that is behynde, this is his remedy. It behoueth him to goe by him selfe, or by another,

to the

to the landes and tenementes, whereof the rent is issuing, and there to demaunde the arrerages of the rente. And if the tenaunt deny to paye it, this denienge is disseysine of the rente. Also if the tenaunte at the time bee not readye to paye it, this is a denyinge and a disseisin. Also if the tenaunte, nor none other, bee dwellinge vpon the landes or tenementes whā he asketh the arrerages &c. this is a denyinge in law, and a disseisine in deede, and of such disseisines hee maye haue an assise of nouel dysseisine againste the tenaunte, and recouer the seysin of the rente and arrerages, and his dammages and costes of his writte and of his plee &c. And if after suche recouerye the rente bee another time denied him, than hee shal haue a redisseisine and recouer double dammages. And it is to bee had in minde, that this name. Assise is Equiuocum. For sometime it is taken for a Jurye, for in the the beginning of ẏ recorde of Assise of nouel disseisin the recorde shal beginne thus. (Assisa venit recognis.) whiche is to saye, that iuratores veñ recogn, & the cause is for this, that by the writte of assise is commaunded to the shirife quod faciat xii. liberos et legales homines de viceneto &c. videre tenementum illud et nomina eorum imbreuiari, & q̄d summ̄ eos p̄ bonos summ̄ q̄ sint corā iusticiarijs &c. parati inde facere recognitionem &c. And for this that by force of such an original writte, a Pannell by force of the same writte ought to be retourned &c. It is

saide

sayde in the beginninge of the recorde in assise Assisa venit recogñ &c. Also in a writ of right it is commonly saide, that the tenant may put him in good and in the great assise &c. Also there is a writte in the Register, called De magna assisa eligenda, so is this a good proofe that this name assise, some time is put for the Jury and some time it is taken for al the writte of assise, and after that intente it is moste apperte and moste cõmonly taken, as assise of nouel disseysyne is taken for all the writte of assise of nouel disseisyne, In the same manner assise of common pasture is taken for al the writte of assise of common pasture, and assise of mordauncester, and assise of Darreine presentment &c. But it seemeth that the cause is why suche writtes at the beginninge were called assyses for this, that by euery suche writte it is commaunded to the shirife that he summon xii. &c. whiche is as muche to say, that he ought to sõmon a Jurye &c. and sometime assise is taken for an ordinance, for to set certeine thinges in a certeine rule and disposicion, as an ordynaunce that is entred in the auncient estatutes is called Assisa panis et seruicie. Also if there bee Lorde and tenaunte, and the lord graunteth the rente of his tenante, by deede to another, saunge to him the other seruice and the tenaunt attourneth, this is a rent secke as it is afore saide. But if the rent bee denyed hym at the next day of payment, he hath no remedy for this that he had not thereof any possession.

But

But if the tenant when he attorney he to the graūtee or after will geue a penie or an halfe peny to the grauntee in the name of seisin of rēt then if after a the nexte day of paimēte ꝯ rent be denyed him he shal haue assise of Nouel disseisin, and so it is if a man grant by his deede a yerely rente issuing out of his land to another &c. If the grauntour than after pay to ꝯ grauntee .i.d. or an halfe peny in ꝯ name of seisin of the rēt than if after the first day of payment the rent bee denied the graūtee may haue assise, or els not. Also of rente seck a mā may haue assise of Worcestre, or a writ of apel or Colinage. & al other maner of actions reals, as the case lyeth as he may haue of any other rent.

Also ther be three causes of disseisin of rēt seruice, that is to say. rescous, repleuin, & enclosure. Rescous is, when ꝯ lord distreine the in the land holden of him for his rent behind if the distresse be reserued fro him or ꝯ lorde come vpon the land, and would distraine and the tenaunt or another man will not suffer him &c. repleuin is when the lorde hath distrayned, and repleuin is made of ꝯ dystresse by writte or by plaintie &c. Enclosure is if ꝯ landes and tenements be so enclosed. that the Lord may not come within the lande and tenementes for to distraine, & the cause whye such things so doone bee disseisin made to the Lorde is for this, ꝯ by such things ꝯ lordes disturbed of the meane by which he ought to

haue come to his rent. And fower cauſes bee of deſſeiſin of rent charge. ỹ is to ſay, reſcous repleuin encloſure, and denyer, for denying is a diſſeiſin of rente charge as it is afore ſayde of rēt ſecke. & two cauſes be of diſſeiſin of rēt ſecke, that is to ſay, encloſure, & denyer, & yet it ſeemeth ỹ there is an other cauſe of diſſeiſin of all the three rentes afore ſaid ỹ is whan the Lord is going to the land holden of him for to diſtreine for the rent being behind, the tenant hearing this encountreth him & foreſtalleth him the way & force & armes & manaſeth him in ſuch fourme that he dare not come to ỹ lande for to deſtrayne for his rēt behinde &c. for doubt of death or bodely hurt, this is a diſſeiſin, for this ỹ ỹ lorde is diſturbed of ỹ meane whereby he ought to come to his rent, & ſo it is if by ſuch forſtalling & manaſſing he ỹ hath rent charge or rent ſecke is foreſtalled, or dare not come to ỹ lād to aſke ỹ rent behinde.

¶ The thirde Booke.

¶ Parceners. Cap. i.

PArceners be in two maners, that is to ſay, parceners after the courſe of ỹ common law, & parceners after ỹ cuſtome Parceners after the courſe of ỹ cōmon laſwe, be, where a man or a woman bee ſeiſed of certain lād or tenemēts in fee ſimple or fee tail, & hath nōe iſſu but daughters & dieth

and

and the tenements discend to the daughters & the daughters enter into the lãds & tenemẽts so to them discended, then the bee called parceners & bee but one heire to ther auncestor & the be called parceners for this ỹ by ỹ write ỹ is called Breue de participatione faciendo they law will constraine them that participation shalbe made among them & if ther be .ij. daughters to whom the lande discendeth thẽ they bee called two parceners & if they be .iij. daughters they be called three parceners, & fower daughters fower parceners, & so forth and if a man seysed of lands in fee simple or in fee taile dye without issue of his body, & ỹ tenements discende to his sisters they be parceners as is aforesayd. In the same maner yt is where he hath no sisters but the land discẽdeth to his auntes they be parceners, but if a man haue but one daughter shee may not be saide parcener but daughter and heire. And it is to weete that partition betwen pceners may be made in diuers maners, one is when they agree to make partition and make partition of the tenements, as if there bee twoe parceners to deuide betwenethem ỹ tenemẽts in two partes euery part by him selfe in seueraltie of euery value, & yf ther be three pceners to deuide the tenements in three partes in seueralty. Another pticiõ ther is to choose by agrement betwene thẽ & certein of theyr frends to make ỹ particiõ betwene them of ỹ lands & tenements, in the fourme aforesayde

And in such cases after such partition the elder daughter shall choose first one of ỹ parts so deuided which shee will haue for her part And then the second daughter after her another parte &c. if it so be that there bee many sisters &c. If it be not ỹ they ne be otherwise agreed betweene thē, for it may be agreed betweene them that one of them shal haue such tenementes and other suche tenementes &c. without any such first election and the parte that the elder sister hath is called in latin Antitia pars, but if the parceners agree that ỹ elder sister shal make partition of the tenements in the fourme aforesaide and if she do then it is saide that the elder sister shal chose the laste part after eche of her other sisters. In other partition, & allottinge there is as if there bee fower parceners & after such partycion made of the lands euery part of the lāde is by it selfe writen in a little scrowe, and yt is couered all in wexe in a manner of a lytle ball, so that no man maye see the scrowe, then is ỹ fower balles of wexe put in a Bonet to keepe in the hands of an indifferent manne, and then the elder daughter first shal put her hande in the bonet which shall take a balle of wexe & the scrowe within the sāe ball for her purparte, and then the second sister shal put her hand in the Bonnet & shal take another, & so then the thirde sister the third ball &c. and in this case it behoueth ech of them to holde thē to their chaunce & allotement,

¶ Also

¶ Also another partition there is as if there bee foure parceners & they will not agree ỹ partition shalbe made betweene them, then one of thē may haue a writ de partitione facienda against the other three sisters, or two may haue a writte of partitione facienda, against ỹ other or the three against ỹ foweth at their election and when iudgement shalbe geeuen vpon such a writ, the iudgemēt shall be such that partition shalbe made betwene ỹ parties, & ỹ shirike in his proper persō shall goe to the landes & tenementes &c. and that he by the othe of xii. true men of his bayliwike &c. shall make partition betweene ỹ partyes the one partie of the same landes shall be assigned to ỹ pleintife or to one of ỹ pleintifes, & an other party to an other &c. not making mencion in the iudgement of the eldest sister more then of the yongest, and of the partition that he hath this doone he shall make notice to the iustices &c. vnder his seale and the seales of the xii. &c. & so in this case maye you see that the elder sister shal not haue the first election &c. but the shirike shal assigne the parte that shee shal haue &c. and it may be ỹ the shirife will assigne first a parte to ỹ yonger sister, and the last parte to the elder.
And note wel partition by agreemēt, & betweene parceners may by the law bee made amōg thē aswel by word without deede as by deede.

¶ Also if two meses discende to twoe par-

ceners and the one mese is worth by yere xx. s. & the other but x.s. by yere, in this case partition may be made betweene thē in such fourme ỹ the one parcener shal haue the one mese and the other parcener shal haue the other mese, and he that shal haue the mese of xx s. and his heires shall pay a yerely rent, of v.s. issuing out of ỹ same mese to another parcener and to his heire for euer, because ỹ euery of them shal haue euen in value, and such partition made is good inoughe, & the same parcener that shall haue the rēt of v.s. and his heire may distreine for the rente of common right in the same mese of the value of xx.s. if ỹ rent of v.s. be behind at any time in whole hands soeuer the same mese commeth though there was neuer writtig made of it betwene them, in the same maner it is of partition of all maner of lands & tenemētz &c. where such rent is reserued to one or two diuers parceners vppon such partition &c. but such rēt is not rent seruice, but rēt charge of common right had and reserued for egalitie of the partition. And note well that none bee called parceners by the common lawe but women or the heires of women, and which come by landes and tenementes by discent, for if sisters purchace lands or tenements of this they been called Iointenāts and not parceners. Also if two parceners of lande in fee simple make partition betweene them &c. and the parte of that one

valueth

valueth much more then the part of the other if the were at the time of partcion of ful age that is to say, of xxi. year, thē they alway shal abide and neuer be defeated, but if tenements whereof bee made particions bee to them in fee taile, and the parte that one hath is much better in yerelye value then the parte of the other, howbeit that they bee excluded during their liues to defete the partcion, yet if the parcener that hath ye lesse part in value hath issue and dieth, the issue may disagree to the partcion, and enter & occupy in commō that other parte that is allotted to her aunt, & so ye aunt may enter and occupie in common the other part allotted to her sister, as no particiō therof had beene made.

¶ Also, if two parceners of tenements in fee take husbands, and they and ther husbandes make partcion betwen them, if the part of ye one bee lesse in yerely value then ye parte of ye other, during ye liues of the husbandes, the partcion shalbee in his force & strength, yet after the death of the husbande ye wife ye hath the lesse parte &c, the same wife or womā may enter in her sisters part as it is aforesaid, & defete the particiō, but if the particiō so made betwene them were such, ye at tyme of lottement were egall of yerely value, then it may not after bee defeted in such cases.

¶ Also, if there be two parceners & ye yōger of them bee within ye age of xxi. yeare, and partcion is made betweene them, so that the

parte that is allotted to the pōger, is lesse in value thē the part of that other. In this case the ponger during the time of her nonage, & also when she cōmeth to ful age of xxi. yeare, may enter in the porcion of her sister allotted &c. and defeate the partition, but such a parceners ought to take heede when shee cōethe to ful age, that she ne take to her owne vse, all ỹ profits of the tenemēts to her allotted, for by that shee agreth to the partition at suche age in which case the partition shall stande and abide in his force & strength &c. but peraduēture the profits of ỹ halfe shee maye take leauing ỹ profits of the other halfe to her sister &c. It is to weete that when it is said males & females bee of ful age that shal bee vnderstanded at the age of xxi. yeare, or if any feoffement or grante, relefe, confirmaciō, obligacion, or anye other writinge before any suche age bee made by any of them &c. or that anye within such age bee baillike or receiuer with any man &c. all seruyth for noughte and may bee auoyded. Also a man before such age shal not bee sworne in no iury nor no inquisition. Also if tenements bee geuen to a man in the tayle which hathe as much lande in fee simple, & hath issue two daughters & dieth. and the daughters make partition betwene them so that the landes in fee simple be alored to ỹ ponger daughter in allowaunce of the tenementes tayled, allotted to the elder daughter if after such partition the ponger daughter a

lieneth

tienethe the lande in fee simple to another in fee, and hathe yssue a sonne or a daughter & dyethe, the yssue maye enter in ẏ tenementes tailed, & them holde in propertye withe their Junte, & this is for two causes . one is for that, that the issue maye haue no remedye of the lande alienes by his mother, for that the lande was to her in fee simple, & in so muche that hee is of the heires in the taile, & hathe nothinge recompencedof that, that to him belongethe of the tenementes tayled, & namelye when suche partition makethe no discōtinuaunce of the taile as shal bee saide hereafter in the Chapiter of discontinuaunce. But the contrarye is holden M. 10 H. 6. ẏ is to say, that they may not enter vpon ẏ parcener that hath his land tayled, but is sent to his Formedon.

In other cause is, for that, that it shalbe erected the foly of the elder sister, ẏ shee wolde agree to the partition where shee might haue had halfe the land in fee simple, and halfe of ẏ tenemētes in ẏ taile for purpartye, and so to bee sure without damage &c. Also if a mā seysed in a ploughe lande by iuste title disseyseth an inkāt within age of another ploughe lande, and hath issue two daughters, and dyeth seysed of both those ploughe landes, ẏ enfant then beinge within age, & ẏ daughters enter & make partition, thē ẏ on plough lād is lotted to ẏ purparty of the one, as percase to the yonger sister in alowaunce of that o

ther

ther ploughe land that allotteth to ỹ purpar-
ty of that other, so that after the mãt entreth
in the ploughe lande of the whiche hee was
dysseised vppon the possession of the parcener
that hath the same plough lande, than the sa-
me parcener may enter into the other plough
lande that the sister hath and holdeth in par-
cenary with her, but if the ponger sister alien
the same plough lande to another in fee sim-
ple before the entre of the enfant, and after ỹ
childe entrethe vpon the possession of the ali-
ene, then shee maye not enter into the other
plough lande, for this that by her alienation
shee hath vterlye dismissed her selfe to haue
anye parte of the tenements as parcener, but
if the ponger sister before the entre of the en-
faunt make therof a lease for terme of years
or for terme of life or in fee taile, sauing ỹ re-
uersion to her, and after the chylde entrethe
ther paraduentvre it is otherwise, for this ỹ
shee dismissed not her selfe of al that, ỹ was
in her, but hath reserued to her the reuersion
& the fee simple &c.

¶ Also if there be three or fower parceners
that make particion betwene them, if ỹ parte
of the one parcener be defeted by such lawful
entry, she may enter & occupy the same other
lands of al the other parceners, and compelle
them to make new particiõ of the other lãds
betwene them &c.

¶ Also, if ther bee twoe parceners, and the
one taketh an husbande, and the husbande &

the

the wife haue issue betwene them, & the wife dieth, and the husband holdeth him in ꝑ halfe as tenaunt by the curtesie. In this case ꝑ parcener ꝑ survyueth & the tenant by the curtesy may wel make particiō betwene thē &c. And if the tenāt by curtesie wil not agree to make partictō, then the parcener ꝑ survyueth maye haue a writ de partticipacione facienda &c. & compel him to make partician. But if the tenāt by the curtesy wil haue particiō betwene them, & the parcener ꝑ survyueth wil not haue it then the tenāt by the curtesie shal haue noe remedy for to haue partician for he may not haue a writ de ꝑticipacione facienda for this ꝑ he is not parcener, for such a writ lieth for peners al only. And so may ye se ꝑ the writ de participacione faciēda lieth against tenāts by the curtesie, & yet himselfe maye not haue such a writ.

¶ Parceners by the custome. cap. 2.

PArceners by the custome be where a man seysed in fee taile of the lands or tenemēts that be of the tenure called Gauelkinde with in ꝑ shire of Kēt, & hath issues diuers sōnes & dieth, such landes & tenements shall discēd to all the sonnes by the custome, and they eeuenly shal inherite and make partycion betweene them by the custome, as females doe, and a writ de participacione facienda lyeth in this case as betweene females, but it

it behoueth in the declaration to make mẽtiõ of the custome. Also such custome is in other places in England, and also such custome is in Nozth Wales.

¶ Also there is another partition ỹ is of another nature, and in another fourme then any of the partitions afozesaid, as a man seysed of certeine lands in fee simple hathe issue twoo daughters, and the elder is maried, and the father geueth parcel of the same lands to the husband with his daughter in franke mariage, and dyeth seysed in the remnaunt the which remnaunt is of moze greater value by yere, then bee the landes geeuen in franke mariage.

¶ In this case the husband & the wife shal haue nothing foz theire parte of the sayd remenant, but if they will put their lands geuen in franke mariage in hotchpot with the remenant of the lande with her sister, and if they wil not do so, thẽ the yonger sister may occupie the same remenaunt, and take to her the profites onely, and it seemeth that this word hotchpot is in English a pudding, foz in such a pudding is commonly put not one onely thing, but one thing with an other and foz this that it behoueth in such case to put the landes geeuen in franke marryage with the other landes in hotchpot if the husband and the wife wil haue any thing in the other remenãt &c. this word hotchpot is but a terme of similitude, & is as much to say as to put the

landes

landes geeuen in frank mariage & other lāds in fee simple &c, together, & this is to such entent to accompte the value of all the landes ꝑ is to say, of ꝑ lands geeuen in frank mariage & the remnaunt that was not geuen and the partition shalbe made in this fourme that ensueth. As put case that a manne seased of xxx. acres of lande in fee simple, euery acre in value xii. d. by ꝑ yeare which hath issu. 2. daughters and the one is couert baron, & ꝑ father geueth x. acres of the xxx. acres to ꝑ husband with his daughter in frāke mariage & diethe seysed of the remnaunt, then the other syster shall enter in the remnaunt, that is to saye in the xx. acres & shall occupye it to her owne vse, except the husbande & the wife wyll put theire x. acres geuen to them in frank maryage with the other xx. acres in hotchpot, that is to saye together and then when the value is knowen of euery acre, that is to say euerie acre is perelye worth xij. d. then ꝑ partition shalbe made in such fourme, that is to say ꝑ the husband and the wife shall inquire aboue the x. acres geeuen to them in frank mariage x. acres in seueraltie of the xx. acres, and that other sister shal haue the remnant, that is. xij acres of the xx. acres for her parte, so that accompting the x. acres that the husbande & the wife had in franke mariage, & there other x. acres of the xx. acres, the husbande & ꝑ wife haue as much in perely value as other sister hath, & so alway vpon such partition ꝑ lands

geuen

geuen in franke mariage abide to the donee
or to ỹ heires &c. after ỹ fourme of ỹ gift &c.
For if ỹ other parcener ſhould haue nothing
of this that is geuē in frāk mariage, of thys
ſhould folow an inconuenience & a thing a
gainſt reaſō which ỹ law will not ſuffer &c.
ỹ cauſe why ỹ lands geuen in franke mariage
ſhalbe put in hotchpot is this. that whē a man
geueth lands and tenemētz in frāke mariage
wt his daughter or wt his other coſin, it is to
vnderſtand by the law that ſuch gift made by
ſuch wordes franke mariage is an auancē
mēt of his daughter or of his coſin, & namely
when the donour & his heires ſhall not haue
any rent nor ſeruice of him except fealtie vn
til the fowerth degree bee paſſed &c. and in
ſuch cauſe the law is that ſhee ſhall haue no
thinge of the other lands and tenements di
rended to the other parceners &c. but if ſhee
will put the tenements geuen in franke ma
riage in hotchpot as is aforeſaid, & if ſhe wil
not put the landes geuen in franke mariage
in hotchpot, thē ſhe ſhall haue nothing in the
remenant for this ỹ it ſhalbe vnderſtande by
the law that ſhe is ſufficiently aduaunced to
which aduauncement ſhe agreeth & holdeth
her content, & the ſame law is in this mat
betweene the donees in franke mariage & the
other parceners as to put in hotchpot &c. the
ſame law is betweene the heires of ỹ donee
in franke mariage and the parceners &c, &
the donees in franke mariage dye betwe
ther

heire auncestors, or before such partiō &c. as to put in hotchpot &c. And note well that suites in frāke marriage was ỹ comon law before ỹ statute of westminster the second, and alway after so hathe beene vsed & continued &c.

¶ Also such putting in hotchpot &c. is where lands or tenemēts ỹ were geuen in frank marriage discend from ỹ donours in franke marriage alonly, for if the lands discēd to ỹ daughters by ỹ father the donoure, or by ỹ mother the donoure or by the brother the donoure or other auncesters, & not by the donoure &c. there it is otherwise, for in suche case shee to whō such gift in frāke mariage is made, shal haue her part as if no such gift in frāke marriage had been made, for this ỹ shee was not a nāced by him &c. but by another.

¶ Also, if a man seised in xxx. acres of land euery acre of euen yerely value, having issue two daughters, as it is afore said, & geueth all this to the husband of the daughter xb. acres in franke marriage, & dieth seysed in the other xb. acres, in this case that other sister shal haue the xb. acres so discended to her on ỹ, and the husband and the wife shal not put in such case the xb. acres to him geuē in frāke marriage in hotchpot &c. for this ỹ the tenemēts geuen to him in franke marriage be of as good yearely value as ỹ other lands discended &c.

¶ For

¶ For if the landes geuen in frank mariag[e] were of as euen value as the remnant, or [of] more value, then in vaine and to none ente[nt] such landes geuen in franke mariage shalb[e] put into hotchpot &c. for this y shee may ha[ue] nothinge of the other landes descẽded &c. F[or] if shee should haue any parcel of y other lãd[es] discended, then should she haue more in yer[ely] value, then her sister &c. which the lawe wi[ll] not &c. And as it is said in the cases aforesa[id] of two daughters or two parceners, in th[e] same maner, and in like cases is, wher ther [be] moe sisters after that, as the case & the ma[t]ter is &c. And it is to wite, that landes & te[ne]nementes geuen in franke mariage, shal no[t] be put in hotchpot, but with the lãds discen[]ded in fee simple. or of landes discended in [fee] taile particion shalbe made as if no such gyf[t] in frank mariage had ben made, also no land[es] shalbee put in hotchpot with other, but land[es] that be geeuen in frãk mariage alonely. F[or] if any womã haue any other lãds or teneme[ntes] by any other gifte in the taile, shee shal neu[er] put such lande so geeuen in hotchpot &c. bu[t] she shal haue y parte of y remenant, discẽd[ed] &c, that is as much as y other parcener sh[al] haue of the same remenant.

¶ Also an other particiõ may be made be[]twene parceners, that varieth from the par[ti]cions aforesaid, as if there be three parcene[rs] and the yongest would haue particion, & th[e] other two woulde not, but will holde in par[]cen[ary]

cenary that. that to them belongethe without partiçion. In this case if one parte be allotted in seueralty to ẏ yõger sister after ẏ that shee ought to haue, then the other may hold ẏ remenant in parcenary & occuppe in common without partiçiõ if they wil, & such partiçiõ is good inough. And if after ẏ elder & middle parcener wil make partiçiõ betwene thẽ of that ẏ they held, they may well do so when they please. But where partition shalbee made by force of a writtede Partiçione faciendõ &c. ther otherwise it is, for ther behoueth ẏ euerye parcener haue his parte in seueraltye &c. More shalbe said of parceners in the chapter of Iointenantes. & also in ẏ chapiter of tenantes in common.

¶ Iointenauntes. Cap. 3

IOyntenantes be as a mã seised of certaine landes or tenementes &c. and therof hath ẽ feoffed two, or three, or fower, or moe, to haue & to holde to thẽ & to their heires, or to haue and to holde to them for terme of their liues or for terme of anothers life, by force of whiche feoffement they bee seised, such be iointenauntes.

¶ Also if two or three disseise another of any landes or tenementes to theire owne vse thẽ the disseisoures be iointenantes. But if they disseise another to the vse of one of thẽ, then bee they no iointenauntes, but he to whõ ẏ

vse of the disseisin is made sole tenant, & the other haue nothinge in the tenancy but be called coadiutors to ẏ disseisin &c. And note wel ẏ disseisine is properly where a man entreth into any landes or tenementes where his ētre is not leeful, & putteth him out that hath ẏ frankstenemēt &c. And it is to wete. ẏ ẏ nature of ioint tenācy is, ẏ he ẏ suruiueth shal haue onely ẏ whol tenācy after such estate as he hath if ẏ iointure be cōtinued &c. As if iii. iointenantes bee in fee simple & ẏ one hath issu & dieth yet they ẏ suruiue shal haue ẏ tenemēts whole, & ẏ issu shal haue nothing, & if ẏ second iointenant haue issu & die, yet ẏ thirde ẏ suruiueth shal haue ẏ tenementes whole, & shal haue thē in fee simple to him & to his heires, but other wise it is of parceners. For if iii. parceners be & before any particiō ẏ one hath issue & dieth. ẏ ẏ to him belongeth shal discend to his issu, as if such a pcener dye wᵗ out issue, then ẏ, ẏ to her belōgeth shal discend to her heirs, so ẏ they shall haue this by discent & not by ẏ suruiuoure as iointenauntes haue &c. And as ẏ suruiuour holdeth place amonge iointenantes &c. in ẏ sāe manet he holdeth place amonge them ẏ haue iointe estate or poss. with other of cattel real, or cattel personal. As if a lease of landes or tenementes beemade to many, for terme of yeares, he ẏ suruiueth of ẏ lessees shal haue ẏ tenemētes whole to him during the tearme by force of the same lease. And if

any

my hors, or other cattel personal bee geuen to many mo, he ẏ suruiueth shal haue them to him selfe.

¶ In the same maner it is of dets & duties &c. For if an obligacio bee made to many for one duty, he ẏ suruiueth shal haue al ẏ det & so yt is of al other couenantes & contractes.

¶ Also some iointenauntes may bee that maye haue ioint estates and be iointenantes for terme of theire liues & yet they haue seueral enheritaunces. As the landes be geuē to two menne and to the heires of their two bodies engendred. In this case the donees haue ioint estate for terme of ther two liues & yet they haue seueral inheritance. For if ẏ one of the donours haue issu & dye, the other that suruiueth shal haue al by the suruiuor for terme of his life. And if he ẏ suruiuethe hathe also issue, & dye, then the issue of the one shal haue the halfe of the lande, and the issue of the other shal haue the other halfe of the lande, & theye shal holde the lande betweene them in commune, and bee not iointenauntes but tenauntes in commune. And ẏ cause that suche donees in such coles haue Joint estate for terme of their liues, is this for this, that at the beginning landes weare geuen to them two, which, wordes without more sayīg make a ioint estat'to thē for term of ther liues. For if a man will let land to another by deed or wout deed, not making mē cō what estat he hath, & of this maketh liue

rye of feesin. In this case the lessee shal haue estate for terme of his life, and so in so muche that the landes were geeuen to thē, they haue a iointe estate for terme of their liues: & the cause why they haue seuerall inheritaunce in this, in so much ỳ they cannot by possibilitie haue an heire betwene them engendred as a man and a woman maye haue &c. thē ỳ law will that their estate and theire inheritaunce, shalbee suche as reason will after the fourme & effect of the wordes of the gifte. & this ỳ is to the heires that the one engendreth of his bodie by any of his wiues, and the heires ỳ the other engendreth of his body by any of his wiues &c. So it behoueth by necessitie of reason that they shal haue seueral inheritāce. And in such case, if the issue of one of the donees after the deathe of the donees die so ỳ hee hath noe issue alme of his body engēdred then the donoure or his heire may enter in ỳ halfe as in his reuersion, though the other of ỳ donees hath issue alme &c. And the cause is for so much ỳ the inheritance bee seuered &c. ỳ reuersion in the law is seuered &c. and ỳ succeedour of the issue of the other shal holde no place to haue the whole, & so as it is sayde of males in ỳ same maner it is wher lād is geuen to ij. females & to the heirs of their ij. bodies begotten.

¶ Also if landes be geuen to two females & to the heires of one of them, this is a good iointure, and the one hath a freehold, and the

other

other hath fee ſimple, & if he that hathe ẏ fee dies, he ẏ hath ẏ free hold ſhal haue ẏ hole by the ſuruiuor for terme of life. In the ſãe maner it is wher teñtes be geuin to two & to ẏ heires of the body of one of them engendred the one hath free hold & ẏ other fee taile. Alſo if two iointenants be ſeiſed of eſtate of fee ſimple, & the one graunteth a rent charge by his deede to another out of that, ẏ to him belongeth &c. In this caſe during ẏ life of the grauntor, the rent charge is effectual.

But after his deceaſe the rent charge is void as to charge the lande, for he that hath ẏ lãd by the ſuruiuour ſhal hold al ẏ land diſcharged. And the cauſe is for this ẏ he that ſurmiueth claimeth to haue the land by ẏ ſuruiuoure &c. and not by diſcẽt of his felowe &c. But otherwiſe it is of parceners, for if their bee two parceners of tenementes in fee ſimple & before any partition ẏ one chargethe ẏ, that to him belongethe by his deede of a rẽt charge &c. & dieth without iſſue, and that ẏ to him belongeth diſcendeth to the other parcener. In this caſe ẏ other peener ſhal holde the lande charged &c. for this that he cõmeth to the halfe by diſcent as heire &c.

Alſo if there be two iointenaunte in fee ſimple within one borough whereof landes and tenementes within the ſame borough be deuiſable by teſtament, if the one of the ſaid iointenauntes deuiſe that, that to him belongeth by teſtament &c. and dye, this deuiſe is

voide. And the cause is for this that no deuise may take effecte but after ỹ death al the deuisoure. And for this ỹ by his death, al ỹ land incontinent commeth by the law to his felow ỹ suruiueth by the suruiuor which ne claymeth nor hath nothing in the land, by the deuise but in his owne right by ỹ suruiuour after the course of the lawe &c. for this cause such deuise is voide.

¶ But otherwise it is of parceners seased of tenementes deuisable in such case of deuise. &c. Causa qua supra. Also it is cõmonly said ỹ euery iointenant is seised of the lande that he holdeth iointly &c. through and by al. And this is as muche to saye, ỹ he is seised by euerye parcel, and by al &c. & this is true for in euerye parcel, and by eche parcel, and by al the landes and tenementes he is iointly seised with his felowes &c.

¶ And if two iointenãtes be seised of certain landes in fee simple and that one letteth that that to him belongeth to a stranger for terme of yi. yeare and dieth within the term. In this case after his decease the lessee may ēter and occupye the halfe to him lettē during the term &c. though the lessee neuer had possessiõ of it in the life of ỹ lessour by force of ỹ lesse &c. And ỹ diuersitie betwene the case of the grant of a rēt charge, & this case is this. For in the graunt of a rēt charge by a iointenant the tenãts abyde alway as they were afore without that ỹ any hath any right to haue

parcell

parcel of the tenementes, but them selfe & ȳ tenementes abydein such plite as ȳ were be fore the charge &c. But wher a leale is made by a iointenant to another for term of yeres &c. incontinente by force of ȳ leale the lessee hath righte in the same lande that is to saye of al ȳ, ȳ to his lessour belonged, & to haue ȳ by force of the same leale during his terme & this is the diuersitie &c.

Also iointenantes if they wil, may make partition betwene thē, & ȳ partitiō is good ynoughe, but they shal not be compelled by ȳ law to do it, but if they wil make partitiō of their ꝑper wil & agreemēt, the partitiō shal stande in his strength. H. 3. E. 4.

Also, if a ioinle estate be made of lande to the husband & the wife, and to ȳ thirde per=sonne, in this case ȳ husbande and the wife haue not in ȳ law in their right but ȳ halfe &c And the third parson shal haue as muche as the husbande and the wife hathe, ȳ is to saye, the other halfe &c. And the cause is for that the husband & the wife bee but one per=son in the lawe, & bee in like case, as if estate made to two iointenāts, where eth one hath by force of iointure ȳ one halfe, & the other ȳ other halfe. In the same maner is wher es=tate is made to the husbande & ȳ wife & to o=ther two men, in this case the husbande & ȳ wife haue not but ȳ thirde parte, and the o=ther two men ȳ other two parts &c, Causa qua supra. More shalbe said of thē touching

iointenaunce in the chapiter of tenauntes in common, tenant per Elegit, & tenant by estitute marchaunt.

¶ Tenantes in cõmon. Ca. 4

TEnauntes in common bee they that haue landes & tenements in fee simple, fee taile or for terme of life &c. which haue such lãdes and tenementes by seueral title, & not ioint title, and none of them knowe that that is seueral to him. But they ought by the law to occupie such landes & tenementes in common, and vndeuyded to take the profites in cõmon. And because that they come to such landes and tenementes by seuerall titles, & not by one selfe ioint title, and theire occupacion and possession shalbee by the lawe to be amõge thẽ in cõmon, they be called tenãtes in cõmon, as if a man enfeoffe two iointenãtes in fee, and the one of them alienethe that that to him belongeth, to another in fee, now the other iointenaunte, and ỹ aliene, bee tenantes in common, for this that they be seised in such tenementes by seuerall titles. for the aliene commethe in the halfe by the feoffement of iointenante, and the other iointenante hath the other halfe by force of ỹ first feoffement made to him and to his fyrste fellowe, and so they bee in by seueral titles, and by seueral feoffemẽtes &c. And it is to wete, that when it is said in any booke that a mã is seised i fee, without moze saying, it shalbe vnder

vnderstande fee simple, for it shal not be vnderstande by such woorde in fee, ꝑ a man is seised in fee taile. except ꝑ there be put ther to such addicion, that is to say, fee taile.

¶Also if three iointenantes bee, & the one of them alienethe that ꝑ to him belongeth to another in fee. In this case ꝑ aliene is tenaunt in common with the other two iointenaunces. But yet the other two iointenants bee seised of the two parties iointly, & of their two parties the survivor betwene thē holdeth place &c.

¶Also if there bee two iointenantes in fee and the one geeueth that, that vnto him belongeth to another in the taile, the donee and the other iointenantes be tenantes in cōmō &c. But if the landes be giuen to two mē & to the heires of theire two bodies engēdred ꝑ donees haue ioint estate for terme of their lyues, and if eche of them haue issue and dye theire issues shal holde in common &c. But if landes bee geuen to two Abbottes as to ꝑ abbot of Westminster & to the abbot of saint Albons, to haue and to holde to them and to their successoures, in this case they haue in continente at the beginninge, estate in common and not iointe estate. And the cause is for this, that euery abbot or other soueraign of an house of religiō before that he be made abbot or soueraigne, was but a dead man in the lawe. And when he is made abbot, he is as a man psonable in ꝑ law, al onely to purchase

chase and to haue landes and tenemētes and other thinges to the vse of his house & not to his owne proper vse, as other seculer mē may. And for this in the beginninge of their purchase theye be tenantes in common. And if the one of them die, the abbot that suruyueth shal not haue al by the survivourre but ỹ successour of the abbot ỹ dieth, shal holde ỹ halfe in common with ỹ abbot ỹ survyueth &c.

¶ Also if landes by geuen to an abbot & to a seculer man to haue and to holde to them ỹ is to saye, to the abbot & his successours, & to ỹ seculer man, to him & to his heires, they haue estate in common. Causa qua supra.

¶ Also if landes be geuē to two mē to haue & to hold ỹ one halfe to ỹ one & to his heirs & the other halfe to the other & to his heires they be tenantes in common &c.

¶ Also if a man seised of certeine landes enfeoffeth another in ỹ halfe of the same lande without any speche or assignement or limitacion of the same halfe in severaltye at ỹ time of ỹ feoffement thā ỹ feoffee & ỹ feoffor shal hold the parties of the lande in cōmon. And in ỹ sāe maner as is aforesaid of tenantes in cōmon, of landes or tenements in fee simple or fe taile in ỹ same maner may it be said of tenāts for terme of life. As ỹ two iointenantes be in fee, & ỹ one letteth to a man ỹ, ỹ vn to him belongeth for terme of life. and the other iointenant letteth that, that to him belongeth

longeth to another for terme of life. these two lessees be tenauntes in common for terme of their liues &c.

¶ Also if a mā let lāds to two men for terme of their liues, & the one granteth al his estat of ꝑ, that vnto him belongeth to another &c. then that other tenant for terme of life, & he to whome the graunte is made be tenaunts in cōmon during the time that both lessees, bee alyue.

¶ And it is to bee remembred ꝑ in al other such cases thoughe ꝑ they be not here expres ly named or specified, if they be in like reason they be in like lawe.

¶ Also there be two iointenantes in fee, and the one letteth that, ꝑ vnto him belongethe to another for terme of life during his life, & the other tenant ꝑ did not let bee tenauntes in common. And vppon this case a question may rise as this. Put the case ꝑ the lessour hath issue & dieth, leauing the other iointenant his felow, and liuing ꝑ tenant for terme of life the question may be such, if ꝑ reuersiō of the halfe &c. ꝑ ꝑ lessour hath shal discende to ꝑ issue of ꝑ lessour, or that ꝑ other iointē ant shal haue it by the suruiuour. And some haue said in this case, ꝑ the other iointenant shal haue the reuersion by the suruiuoure, & theire reason is such, when the iointenants were iointly seised in fee simple &c. though ꝑ one of thē made estate of ꝑ, ꝑ vnto him belō geth for term of life, & though ꝑ he hath ther of frankstenemt of that, ꝑ to him belōgeth by

by the leale, yet hee hathe not seuered the fee simple. But the fee simple abydethe to him iointlye as it was beefore. And so it seemeth vnto them that the other iointenaunt ỹ surmyseth, shal haue the reuersion by the surmyse &c. And other haue sayde the contrary and this is theire reason, when one of ỹ iointenauntes letteth that that to him belongeth to another for terme of his life that by suche leale the franktenement is seuered from the iointure. And by the same reason the reuersion that is dependaunt vnto the same franktenemēt is seuered from the iointure. Also if ỹ lessour had reserued to him a perely rent vpon the leale, the lessour onely shal haue ỹ rent &c. The which is a proofe ỹ the reuersion is onely in him and that the other hathe nothing in the reuersion &c. Also if ỹ tenant for terme of life were impleded &c. and made default after default, than ỹ lessour shalbe onely of this receued to defend his righte, & his felowe in this case in no maner shalbe receyued, which prouethe ỹ ỹ reuersion of ỹ halfe is onely in the lessour. And so by consequens, if the lessour dye liuinge ỹ lessee for terme of life the reuersion shal discende to ỹ heires of ỹ lessour &c. & not come to the other iointenant by the survivour. Ideo quere. But in this case if the iointenant ỹ hathỹ franktenement haue issue & dye liuinge the lessour and the lessee, then it seemeth ỹ the issue shal haue the halfe in his demesne as of

fee

fee by diſcent for this that the franktenemēt may not by nature of ꝯ iointure bee annexed to a reuerſion &c. And it is certein that he ꝯ letteth was ſeiſed of the halfe in his demeſn as of fee, & none ſhal haue any iomture in his franketenement, Ergo this ſhal diſcēd to al ſues. Sed quere. But if it be thus, ꝯ ꝯ lawe in this caſe is ſuch, ꝯ if the leſſor die leauing the leſſee, & leauing the other iointenāt that hath the franktenement of the other halfe, ꝯ the reuerſion ſhal diſcend to the iſſue of ꝯ ieſſour, then is the iomture and the title ꝯ anye of them may haue by the ſuruiuour by the right of ꝯ iointure adnulled & all vtterly defeated for euer.

¶ In the ſame maner it is if the iointenant ꝯ hath ꝯ franktenement dye, liuing ꝯ leſſor and the leſſee, yf the law be ſuch ꝯ his frāke tenement & fee ꝯ he hath in ꝯ halfe ſhall diſcend to his iſſue, then the iomture ſhalbe defeted for euer &c.

¶ Alſo if three iointenantes bee, and the one releaſeth by his deede to one of his felowes al ꝯ righte ꝯ he hath in ꝯ land, then hath hee to whom the releaſe is made ꝯ third part of the lands by force of ꝯ releaſe, & he & his felowe ſhal holde the other ij partes iointly, & as to the third part ꝯ he hath by force of ꝯ releaſe, he holdeth ꝯ third part w̄ him ſelfe, & his felowe incommon.

¶ And it is to weete ꝯ ſometime a deede of releaſe ſhal take effecte & ſhalbee in vre to

put

put the estate of him ꝑ made the releas, to him to whome ꝑ release is made, as in the case afore saide.

¶ And also if a ioint estate be made to ꝑ husbande and his wife, and to a thirde parson & the thirde pson releaseth his right ꝑ he hath &c. to ꝑ husbande, then hath the husbande ꝑ halfe of ꝑ the third parsō had, and the wyfe of this hath nothinge. And if in suche case ꝑ thirde release &c. to the wife not naminge ꝑ halfe that the thirde parsō had. And ꝑ husbande had nothinge of this, but in righte of his wife, for this ꝑ in such case ꝑ release shal enure to put the estate to him to whom ꝑ release is made of al ꝑ, that belongeth to him that made ꝑ release &c. And in some case a release shal enure to put al ꝑ right ꝑ he hath that made the release to him to whom ꝑ release is made. As a manne seised of certayne landes and tenementes, is seised by two disseisoures, if the disseisi by his deede releasea al his right &c. to one of the disseisoures, thē hee to whome the release is made, shal haue and holde al the tenementes to hym onelye and put out his fellowe of euerye occupacyon of it. And the cause is for this that the two disseisoures were seised in the tenemēts by wronge by them donne againste ꝑ lawe.

And when one of them hathe the release of him that hadde righte to enter &c. thys righte in such case resteth in him to whom ꝑ release

releaſe is made, & is in ſuch plight as if hee that hadde ẏ̄ righte had entred & enfeoffed him &c. And the cauſe is foꝛ this, ẏ̄ hee that hath befoꝛe had an eſtate by wꝛōg, that is to ſaye, by diſſeiſin, nowe by the releaſe hath a tightfull eſtate.

¶ And in ſome caſe a releaſe ſhal enure by waye of extinguiſhemẽt, & in ſuch caſe ſuch releaſe ſhal helpe the iointenant to whom ẏ̄ releaſe was not made, as wel as him to whō ẏ̄ releaſe is made. And if a mā bee diſſeiſed & the diſſeiſour maketh a feoffmẽt to ij. men in fee, if the diſſeiſi releaſe to one of the feoffours in fee by his deed, thē ſuch releas ſhal ẽure to both ẏ̄ feoffees foꝛ this ẏ̄ ẏ̄ feoffees haue eſtate by ẏ̄ law, ẏ̄ is to ſay, by ẏ̄ feoffemẽt & not by wꝛonge dōe to any other And in the ſame maner is, if the diſſeiſoure make a leaſe to a manne foꝛ terme of lyfe, ẏ̄ remainder ouer to another in fee, if the diſſeiſye releaſe to the tenant foꝛ terme of lyfe all his right &c. This releaſe ẽureth as wel to him in ẏ̄ remainder as to ẏ̄ tenāt foꝛ terme of life &c. And ẏ̄ cauſe is foꝛ this, ẏ̄ ẏ̄ tenāt foꝛ terme of life cōmeth to his eſtate be ẏ̄ courſe of the law. And foꝛ this ẏ̄ releaſe ſhal ẽure & take effecte by waye of extinguiſhmẽt of ẏ̄ right of him, ẏ̄ hath releaſed &c. And by this releaſe ẏ̄ tenāt foꝛ terme of life hath no greater eſtat thē he had befoꝛe ẏ̄ releaſe made vnto him, & ẏ̄ righte of him ẏ̄ releaſed is all vterlye extinct. And in ſo muche that ſuche releaſe

releaſe cannot enlarge the eſtate of ỹ tenant for terme of life, it is reaſon that ỹ releaſe ſhal endure to him in the remainder &c. more ſhal bee ſaid of releaſes in the Chapiter of releaſe.

Alſo if there bee two parceners, and the one alieneth that ỹ vnto him belongeth to another, thē the other parcener & ỹ aliene be tenantes in common.

Alſo tenantes in common may be by title of preſcripcion, if the one & his aunceſteres, or they whoſe eſtate he hath in ỹ halfe haue holden in common the ſame halfe, withe ỹ other tenant that hath the other halfe, & with his aūceſters, or them whoſe eſtate he hath as vndeuided frō time whereof no memorye rēneth. And diuers other maners may make & cauſe men to be tenauntes in cōmon ỹ be not here expreſſed.

Alſo, in ſome caſe tenants in cōmō ought to haue of theire poſſeſſiō ſeueral accions, & ī ſome caſes they ſhal ioine in one acciō. For if ther be two tenantes in common, & they bee diſſeiſed, the ought to haue againſte the diſſeiſour two aſſiſes, & not one aſſiſe, for euery of them ought to haue an aſſ. of his halfe &c. & ỹ cauſe is for this ỹ tenants in common were ſeiſed by ſeueral titles but otherwiſe it is of iointenantes. For if there be xx. ioyntenants & they be diſſeiſed, they ſhal haue in all theire names but one aſſiſe, becauſe ỹ they haue but one iointe title.

Alſo

¶ Also if there be thzee iointenants, and one releaſe to one of his fellowes al the ryghte that he hath, and after the other two be diſſeiſed of the whol &c. in this caſe the other ſhall haue ſeueral aſſiſes in this fourme. ꝑ is to ſay they ſhal haue in both their names one aſſiſe, of the two partes &c. foz this that they helde the two partes iointly at the time of the diſſeyſin. And as to the third parte, hee to whō the releaſe was made, oughte to haue therof an aſſiſe in his owne name, foz this that as to the thirde parte hee is tenant in common &c. foz this that he came to the thirde part by foꝛce of the releaſe and not onely by foꝛce of the iointure.

¶ Also, as to ſue accions that touchethe the royaltie, there is diuerſitie betwene pceners that bee in by diuers diſcentes, and tenaūtes in common. Foz if a manne ſeiſed of certaine landes in fee. haue iſſue two daughters & dye, and they enter &c. and eche of them hath iſſue a ſonne and dye without particiō made betwene them, by which the one halfe diſcendeth to the ſonne of the one parcener, and the other halfe dyſcendeth to ꝑ ſonne of the other parcener, and they enter and occupy in common & be diſſeiled, in this caſe they ſhall haue in there two names one aſſiſe and not two aſſiſes. And the cauſe is, that though they cōe in by diuers diſcentes &c. yet the be pceners, & a writ de ꝓticipatione faciēda lieth betwene thē, And they be not pceners hauing regarde

or respect onelye to the seisin & possessiō frō their mother, but they bee parceners haupn ge more respect to the estate ỹ discended frō their graundfather to their mothers. For they may not be parceners where their mothers were not parceners before &c.

¶ And so to suche respect and consideracion ỹ is to wete, as to the first discent ỹ was to their mothers they haue a title in parcenary the which maketh thē parceners. And also they be but as one heire to their cōmon auncester, ỹ is to say to their graundfather frō whom the land descended to their mothers, And for these cases before particiō betwene thē &c. they shoulde haue one assise thoughe they come in by seueral discents &c.

¶ Also, if there be two tenants in commō in certaine landes in fee, and they gaue ỹ same land to another man in the taile or let it to another mā for terme of lyfe, yelding an annuitie or certaine rent, and a poūde of peper or an hawke, or an horse, & then bene seysed of these seruices & after al the rent is behind & the distrayne for it and the tenant maketh them rescous.

¶ In that case as to the Rente and the pounde of peper. they shal haue two assises, and as to the hawk & the horse but one assise. and the cause whye they haue two assises as to the Rent and pounde of pepper, is thys, in so muche that they were tenauntes in common by seueral tytles, and when they

made

made a gifte in the taile, or leafe for terme of life &c. fauing to them the reuerſion, & yelding to them certeine rent &c. Such reſeruacion is incident to their reuerſion.

¶ And for this that their reuerſion is in cõmon and by ſeuerall titles, as their poſſeſſion was before their rent, and other thinges that may be ſeuered and were to thẽ reſerued vpon the gift or vpon the leafe which be incydent by the law to the reuerſion, ſuch things ſo ſeuered was of the nature of the reuerſion which reuerſion is to them in commõ by ſeuerall titles, And it behoueth that the rẽt of the pound of peper which may be ſeuered is to them in common by ſeueral titles. And of this they ſhal haue two aſſiſes, & euery of thẽ in his aſſiſe ſhal make his plaint of the halfe of the rente and of the halfe pounde of the peper. &c.

¶ But of the hawke & the horſe which can not bee ſeuered, they ſhal haue but one aſſiſe for a man may not make a plaint in aſſiſe of ŷ half of an hawk or of the half of an horſe &c. In the ſame maner it is of other rentes & ſeruices that tenaunts in cõmon haue in groſſe by diuers titles.

¶ Alſo as to accions parſonels, tenauntes in common ought to haue ſuch accions perſonels iointlye in al ther names, that is to ſay e of Treſpas or of offences that touch theire tenauntes in common, As of breakinge of theire howſes, breakinge of their cloſes and

paſtures, waſting & deſouling of their graſſe cutting of their wood, & to fiſh in their ponds & ſuch other. In this caſe tenãts in common ſhal haue one acciõ iointly and recouer iointly dãmages becauſe ỹ the accion is in ỹ perſonalty & not in the realtie.

¶ Alſo if two tenauntes in common make a leaſe of their twoe tenements to another foꝛ terme of yeres yeldinge vnto them yerely a certein rent if ỹ rẽt be behinde &c. the tenãte ſhal haue one acciõ of debt againſt the leſſee & not diuers accions, foꝛ that the accion is in ỹ parſonaltie.

¶ Alſo tenaunts in common may make partition betwene them if they will, though they ſhal not bee compelled by the laẅe. But if they make particiõ betwene them by their agrement and aſſent, ſuch partition is good ynough as it is adiudged in the booke of aſſiſe 19. E. 3. 4.

¶ Alſo as there be tenants in cõmon of landes oꝛ tenements &c. as is afoꝛeſaide. In the ſame maner there be poſſeſſions & pꝛopeꝛties of chattel real & chattell perſõall. As if a leaſe be made of certein landes to two menne foꝛ terme of xx. yeres, and when they be therof poſſeſſed, the one of ỹ leſſees granteth that ỹ vnto him belongeth beefoꝛe ỹ terme to another, then he to whome the grant is made & the other ſhal holde & occupy in common.

Alſo if twoo iointenantes haue the warde of the body & of the landes of the childe within

age

age and that one of them granteth to another that ỹ vnto him belongeth of the same ward then the grauntee, and the other that grauteth not, shal haue and holde it in common &c.

¶ In the same maner it is of chatels personels as if two haue a ioint estate by gifte, or by buying of an hors or an Oxe &c. ỹ one of them grauntethe that, ỹ to him belongeth of the same hors or oxe &c. Then the grantee & he that granted not shal haue and possesse suche chattel parsonel in cõmon &c. and in suche cases wher diuers parsõs haue chatels realz or parsonals in common & by diuers tytles if the one of thẽ dye, the other that suruiueth shal not haue that by the suruiuour. But the executours of hym that dieth shall holde and occupy that withe him ỹ suruiuethe as their testatour dyd, or ought in his life &c. for this that their titles and righte in this cafe were seuerall.

¶ Also in this cafe aforesaide if twoe haue estate in commõ for terme of yeres, & the one occupy all, & put the other out of his possession ond occupacion, then shal hee that is put oute of occupacion haue against that other a writ de Electione firme for the halfe against the other. In the same maner it is wher two holde the warde of landes or tenements duryng the nonage of a childe, yf one put out ỹ other of his possession, he ỹ is out shal haue a writte of Electment de garde of the halfe, for thys that those thynges be chatels reals

and may be apporcioned and seuered &c. But no such accion of trespas, ỹ is to say. Quare clausum suum fregit & herbam suam cōculcauit & consumpsit &c. And such like accions ỹ one may not haue against the other, for thys that eche of them may enter & occupy in cōmon &c. throughe and by all the tenementes whiche they holde in common. But if two be possessed of chatels personels in cōmon by diuers titles, as of an horse, or an oxe, or a bow if the one take it all to himselfe oute of ỹ possession of the other, the other hath none other remedy but to take this of him that hath dōe to him the wrong for to occuppe in common when hee may see his time.

¶ In the same maner it is of chattel reall ỹ may not be seuered as the case aforesaid. two bee possessioners of a warde of the bodye of a childe within age, if one take the childe out of ỹ possession of the other, the other hath no remedy by any acciō by the lawe, but to take the childe out of the others possession whē he seeth his time &c.

¶ Also when a man in pleding will shewe a deede of feoffemēt made vnto him, or a gift in the tayle, or a lease for terme of life of any landes or tenements there he shal say by force of which feoffement, gift or lease he was seised &c.

¶ But where a mā will pled a leas or a grāt made vnto him of a chatel real or psonel, ther he shal say ꝑ force of which he was possessed

More

More shalbe said of tenants in common in ỹ chapter of releases, Confirmacions, & tenātz per Elegit.

¶ Estates vpō a condicion, cap. v.

ESTates ỹ men haue in landes or tenemēts be in two maners. That is to say, they haue estate vpō condiciō in deed, or vpon condycion in lawe. ¶ Upon condiciō in deede is as a man by deed endented enfeoffeth another in fee reserving to him and to his heires yerely a certein rēt paiable at one feast or at diuers feastes by yere, vpon condicion ỹ if ỹ rent be behind &c. that it shal be lawful to ỹ feoffor & to his heires to enter into the landes or tenements. &c.

¶ Or if the lands be aliened to another in fee to yelde vnto him certain rent &c. And if it happen ỹ the rent be behinde by a weke after anye day of payment of it, or by a moneth, or by halfe a yere after any day of payment, that then it shalbe lawful to ỹ feoffour and to his heires to enter &c.

¶ In this case if the rent bee not payde at such a time or before such a time limmitted & specified within the condicyon comprised in ỹ indenture, thē may ỹ feoffor or his heires enter into such landes or tenemētz, & them in his first estate to haue & to hold, and of thys to putte the feoffee cleane oute, and it is called estate vpon condicion, for thys that the

eſtate of the feoffee is defenſable if the condi
cion be not perfoꝛmed.

¶ In the ſame maner it is if lands be gene
in the tail, oꝛ let foꝛ terme of life, oꝛ foꝛ terme
of yeres, vpon ſuch condicion ꝛc. But where
a feoffement is made of certeine lands, reſer-
uing certain rents vpon ſuch condicion, that
if ẏ rent be behinde, ẏ it ſhalbe lawful to the
feoffour and to his heires to enter, & the land
to holde, til they be ſatiſfied oꝛ paide of theyr
rent behinde ꝛc. In this caſe, if the rente be
behinde, and the feoffoure and his heires en-
ter, ẏ feoffee is not excluded cleane out: But
the feoffour ſhall haue and hold the land and
take the pꝛofites tyll that hee bee ſatiſfied of
the rent behinde. And when hee is ſatiſfyed
the feoffee may reenter in the ſame landes &
holde it as he did befoꝛe, foꝛ in ſuche caſe the
feoffour ſhal haue it, but in manner foꝛ a diſ-
treſſe in the meane time, til he be ſatiſfied of
ẏ rent ꝛc. though hee take the pꝛofites in the
meane time.

¶ Alſo diuers woꝛdes amonge other there
be, ẏ by vertue of them ſelfe make eſtate vpō
condicion. One is this woꝛde of condicion,
as A. enfeoffeth B. of certaine lande to haue
& to holde to ẏ ſame B. and his heires vpon
condiciō that the ſame B. and his heirs ſhal
pay oꝛ do to be payd to the foꝛeſaid A. and to
his heires yerely ſuch rents ꝛc. In theſe ca-
ſes without any moꝛe ſayinge ẏ feoffee hath
eſtate vpon condiciō. Alſo if ẏ condiciō were

ſuche

ſuche. Prouided alwaye that the aforeſaide B. paye or doe to bee paid to the aforeſaide A ſuche rente. Or if the were thus, ſo that the aforeſaid B. paye or doe to be paid ſuch rēte. in theſe caſes with oute any more ſayinge, the feoffee hath eſtate but vppon condycion. ſo that if hee perfourme not the condycion, the feoffour and his heires maye enter &c.

Alſo other woordes there be in a dede that cauſeth the tenaunts to be condicionels, as vpon ſuch a feoffement a rente is reſerued to the feoffour &c. and after it is put in deede ꝑ if it chaunce the aforeſaid rent to be behinde in parte or in all &c. that thē it ſhalbee lawful to the feoffour and to his heirs to enter, And this is a dede vpon a condicion. But ther is diuerſitie betwene the wordes if it chaunce, &c. and the wordes next aforeſaide. For this woorde if it chaunce &c. is nought worth to ſuch condicion, but if it haue theſe woordes folowing, that is to ſay, that it ſhalbe lawful to ꝑ feoffour & to his heires to enter &c. But in theſe caſes aforeſaid, it nedeth not by ꝑ law to put ſuch clauſe, that is to ſay, ꝑ the feoffor and his heirs may enter &c. for this that they may ſo doe by force of the woordes aforeſaide becauſe that they conceyue in themſelfe in ꝑ lawe a condicīō, that is to ſay that ꝑ feoffor and his heires may enter, yet it is cōmonly in all ſuch caſes aforeſaid, to put ſuch clauſes in the deedes, that is to ſaye if the rent be be-

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behinde &c. ẏ it ſhalbe lawfull to the ſame feoffour and his heires to enter &c. And this is well done to that entente for to declare and expreſſe to the lay men ẏ be not learned in the law, the maner and the condicio of the feoffement, &c. As a man ſeiſed of land as of frā tenement, let ẏ ſame land to another by dede indēted for terme of yeres, yelding vnto him certain rent, it is vſed to put in the deed, ẏ yf the rent be behinde at the day of payment by a moneth &c. That then it ſhalbe lawful to ẏ leſſour to diſtreine &c. & yet the leſſour maye diſtraine of cōmon right for the rent behinde &c. though ſuch wordes neuer were ſet in ẏ deede &c.

¶ Alſo if any feoffement be made vpō ſuch condicion, that if our feoffour pay at a certein day &c. xx. li. of money, that then the feoffoure may enter &c. In this caſe ẏ feoffee is called tenant in mortgage, that is as much to ſay in frenche as mortgage, in latine mortuum vadium, & in Engliſh a deade pledge. And it ſeemethe ẏ the cauſe whye it is called mortgage is for ẏ it ſtādeth in doubt if the feoffour may pay at the day limitted ſuch a ſūme or not, & if he pay not, then the land ẏ is put in pledge vpon condicyon for the payment of ẏ money is gone from him for euer, & ſo deade as to ẏ tenant &c.

¶ Alſo as a man may make a feoffemēt in fee in mortgage, ſo may a man make a gifte of the taple in mortgege, and a leaſe for terme of

of life or for terme of yeres in mortgage. And all such tenauntes bee tenauntez in mortgage, after the state that they haue in ỹ landes &c.

Also if a feoffemẽt be made in mortgage vpon condiciõ that the feoffour shal pay such a summe at such a day &c. as is betwen them by their dede, indented, accorded and limitted though the feoffour dye before the day of payment &c. yet if the heyre of the feoffour pay ỹ same summe within the day to the feoffee, or profer him the mony, and the feoffee refuseth to receiue it then may the heire enter into the landes. And yet the condiciõ is, if the feoffour pay such a summe at such a day &c. & not making mencion in the condicion of any paymẽt to bee made by his heire, but for this ỹ the heyre hath intereste of right in the condicion &c. and the intente was but that the moneye should be paide at the day set &c. & the feoffee hath no more dammage to be paid by ỹ heire then thoughe hee were payd by the father &c for this cause if the heire pay the moneye or tendreth the money at the day sett &c. and the other refuseth it he may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the mony at ỹ day set, then the feoffee is not bound to reseiue it &c.

And it is to bee had in mynd that in such case where such lawefull tender of the money

is

is made & the feoffour refuseth to receiue it, wherefore the feoffour or his heires do enter &c. thē the feoffee hath no remedy to haue the money by the common lawe, for this ꝑ it shal bee rected his owne follye that he refused the money when lawful proffer was made of it to him &c.

¶ Also if a feoffament be made in such cōdycion, that if the feoffee pay to the feoffour at such a day betwene them limmitted xx. lib. ꝑ then the feoffee shal haue the landz to him & to his heires, and if he faple to pay the mony at the day &c. that thē it shalbe lawful to the feoffour or to his heirs to enter &c. & if after before the day set, the feoffee selleth the lād to another, and therof maketh a feoffement vpō him. in this case if the secōd feoffee wil tender the summe of his mony at the day set to the feoffour, and the feoffour refuseth it, &c. then hath the secōd feoffee estate in the lād clerely without condiciō. And the cause is for ꝑ the second feoffee had interest in the condiciō for saluacion of his tenancy. And in this case it semeth that if the first feoffe after such sale of the land wil tender the money at ꝑ day set &c. to the feoffour, that shal bee good inough for the saluacion of the estate of the secōd feoffee for this ꝑ the firste feoffee was ꝑtiy to the condiciō. & so the tēder of any of thē is good inough &c.

¶ Also if ꝑ feoffement be made vpō condiciō ꝑ if the feoffor pay a certain sūme of moneye

to the feoffee, ẏ then it shalbe lawfull to the feoffour and to his heirs to enter &c. In this case if the feoffour die before the day of payment, and the heire wil tender to the feoffee the money, such tender is voide, for this, that the time within which the tender ought to be made is past. For when the condicion is that if the feoffour pay the money to ẏ feoffee, this is as much to say that if the feoffour duryng his life paye the money to the feoffee &c. And when the feoffour dieth, then the time of the tẽder is past. But otherwise it is wher a day of payment is limitted, and the feoffour dieth before ẏ day, then may ẏ heire, tender the money as it is aforesaide. for this at the time of the tender was not past by the death of ẏ feoffour. Also it semeth in such case where the feoffour dyeth before ẏ day of payment if ẏ executours of the feoffour tender the money of ẏ feoffee at ẏ day of paymt the tender is good ynough. And if the feoffee refuse this, ẏ heirs of the feoffour may enter &c. and the cause is for this that the executours representẽ ẏ parson of their testator &c. And note well that al such cases of condicion of paymẽt of certeine sũme in grosse, touching landes or tenemẽts if lawfull tẽder be once refused, he ẏ ought to pay the money is therof assoyled and clerelye discharged for euer after.

¶ Also if ẏ feoffee in mortgage before ẏ day of paimẽt ẏ shalbe mad vnto him, make his executors & die, & his heirs entre into ẏ lãd as

as hee ought. It ſemeth in this caſe ỹ the feoffour ought to pay the money at ỹ day ſet to the executours, & not to the heire of ỹ feoffee for this that ỹ money at the beginning belonged to the feoffee in maner as a duetie. And ſhalbe vnderſtand that ỹ eſtate was made because of borowing of the mony of ỹ feoffee, or becauſe of another duetie. And for this ỹ payment ſhal not be made to ỹ heire of ỹ feoffee as it ſemeth. But the wordes of the condicion may be ſuch, that ỹ paymt ſhalbe made vnto the heire as if the cõdicion were ỹ the feoffour pay to the feoffee or to his heirs ſuch a ſume at ſuch a day &c. There after the death of the feoffee if he dye before the daye limitted, then the payment ought to be made to the heire at the day ſet &c.

¶ Alſo in ſuch caſe of a feoffemt in morgage a queſtion hath ben demaũded in what place the feoffour is bound to tẽder ỹ mony to the feoffee at the day ſet &c. And ſome haue ſaid that vpon the land ſo holden in morgage for this that the condicion is dependant vpõ the land, and they haue ſaide ỹ if the feoffour be ready vpon the land to pay the money at the leaſt or day ſett, and the feoffee be not at that time there, that then the feoffour is excluded & diſcharged of paiment of the mony, for this ỹ no defaut was in him, but it ſeemeth to ſõme ỹ the law is contrary, & ỹ defaut is in him. For he is bound to ſeeke ỹ feoffee if he be thã at any time in any maner of place, ẏ in the

realme

realme of England. As if a man be bound in an obligacion of xx.li. vppō condiciō endorsed vpon the obligacion, that if hee pay to him to whome the obligacion is made at such a day x.li. that then the obligacyon of xx.li. shal lose his force & shalbe holden for naught. In this case it behoueth him ẏ made the obligacion to seeke him to whome the obligacion is made if he be within Englande & at the day set, to tēder to him the said x.li. &c. And otherwise he forfeiteth the summe of xx.li. cōprised within the obligacion, & so it seemeth in the other case &c. And though that some haue said that the condicion is dependant vpon the land, yet this is not proued ẏ the releasunce of the cōdicion to be performed ought to be made vpō the land &c. No more thē if the cōdiciō were that the feoffour should do at such a day &c. an especial corporall seruice to the feoffee not naming the place where the corporal seruice should be don. In this case the feoffour ought to do such corporal seruice at the day limitted to the feoffee in what so euer place in Englād that the feoffee be if he will haue aduantage of the condicion &c. And so it semeth in that other case. And it seemeth to them that it shal be more properly saide that the estate of the land is dependaunt vppon the condycion &c. which is as much to saye, that the condicion is dependaunt vppon the said &c. but enquire &c.

But if a feoffement in fee bee made, reseruyng

uing to the feoffour an annuel rent, & for de
faut of payment, a reentre &c. in this caſe it ne
deth not to the tenant to tender the rent whē
it is behinde, but onely vppon the lande, for
this, that this is a rente going out of the land
for this is rent ſecke. For if the feoffour be
once ſeyſed of this rent, and after he cōmeth
vpon the lande &c. and the rent is denyed him
&c. he may haue an aſſiſe of nouel diſſeiſin, for
though he may enter becauſe of the condycō
broken, yet he may chooſe, that is to ſay, to e
ter, or to haue an aſſiſe. And ſo is ther diuer
ſity as to ỹ tender of the rente that is goynge
out of the land, and of tender of another ſūme
in groſſe which is not going out of any land.
And therfore it ſhalbe ſure & a good thinge
for them that will make ſuch feoffement in
mortgage, to put and ſet a ſpecial place where
the mony ſhalbe paide. And the more ſpecy-
all that it is put, the better it is for the feoffy
as if A. enfeoffed B. to haue to hym and to
his heires vpon ſuch condicion, that yf A.
pay to B. in the feaſte of Saint Michael the
archangell next comming in ỹ cathedrall chur
che of S. Paule of L. within 4. hours next
before the hower of noone of the ſāe feaſt at
ỹ roode loft of the Northdooze win the ſame
church or anye other certein place within the
ſame churche ỹ then it ſhalbe lawfull to the
foreſaide A. and to his heires to enter &c. In
ſuch caſe it needeth not to ſeeke the feoffee in
anye other place, but in the place compyſed
in

in the indenture nor to be their more longer time then ẏ time specifies in ẏ same indentu re, for to rẽder or paye ẏ money to ẏ feoffee.

¶ Also in suche case where the place of paye mente is limtte, the feoffee is not bounde to re ceiue the paiment to none other place, but in ẏ place so limitted. But yet if he receiue the paiment in any other place this is good yn ough & as stronge for the feoffour, as if the receit had ben in the place so limitted &c.

¶ Also in this case of feoffemẽt in morgage if the feoffour paye the feoffee an horse or a cup of siluer, or ring of golde, or any other such thing in ful satisfaccion of the money, & the other this receueth, this is good ynough & as stronge as if he had receiued ẏ summe of money, thoughe the horse, or any of the o ther thinges bee not ẏ twenty parte worth in value of the summe of money, for this ẏ the other hath accepted it in plaine and full satisfaccion.

¶ Also if a mã ẽfeoffe an other in fee vppõ condicio that he and his heires shal yelde to a stranger and his heires a yerely rente of x.s. and if hee and his heires faile of paye ment of this, that then it shalbe leeful to the feoffoure and to his heires to enter, this is a good condicion. And yet in this case though suche a yerely rent bee calle d anannual rent, this is not properly a rẽt, for if it shalbe rẽt thoughte to be rẽt service, rent charge, or rẽt secke, & yet it is none of them, for if the strã

ger were seised of this & after it were to him denied, hee shal neuer haue assise of this, for this that it issueth not out of any lands, and so the straunger hath no remedy if any such yerely paiment bee had behind in this case, but that ỹ feoffour & his heirs may enter &c. and yet if the feoffour and his heirs entr for defaut of paiment then such rent is gone for euer and so such rent is but a paiment, sette to the tenaunt and to his heires that ỹ they will not pay this after ỹ fourme of the indenture ỹ they shal loose there lande by ỹ entre of the feoffour or his heires for defaut of paiment. And in this case it seemeth that the feoffee & his heirs ought to seek ỹ straungers & his heirs if they be in Englande, because ỹ no place is limitted where the payment shalbe made, & because ỹ such rent is not going out of any land &c.

¶ And here note wel iij. thinges, one is, ỹ no rent that is properly said rent may be reserued vpō any feoffemēt, gift or lease, but only to the feoffour or to the lessour, or to their heires & in no maner may be reserued to any strange persō. But if ij. iointenantz make a lease by deede indented reseruing to ỹ one a certain yerely rent, ỹ is good ynough to him to whom the rent is reserued, for this ỹ he is priuy to the lease & not a straunger to this &c. The second thinge is, ỹ no entre or rentre which is al one, may be reserued nor gi-uen to any person, but onely to the feoffour

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or to the donour or to the leſſour, or to their heires, & ſuch entre may not be alyened nor graũted to any perſõ. For if a man let landes to another for terme of life by indenture yelding to the leſſour & to his heires a certeine rent, & for defaut of paiment a reentrie &c, if after ỹ leſſor by a deed graũt the reuerſiõ of ỹ lãd to another in fee, & ỹ tenãt for term of life attourneth &c. if the rent after be behind ỹ grantee of the reuerſiõ may diſtreine for ỹ rent, for this ỹ the rent is incident to ỹ reuerſion, but he may not enter into the lãd & put out the tenãt as the leſſor might or his heirs if the reuerſion had ben continued in thẽ &c. & in this caſe the entre is taken away at all times for ỹ graũtee of the reuerſiõ may not enter. Cauſa qua ſupra. And ỹ leſſour nor his heires may not enter, for if the leſſour may enter, then he ought to bee in his firſt eſtate &c. & ỹ may not bee, for this ỹ he hathe from him the reuerſion &c.

¶ And if there be lorde and tenaunt, & the tenant maketh ſuch a leaſe for terme of lyfe yelding to ỹ leſſor & to his heires ſuch yerely rent, & for defaute of paiment a reentrie &c. if after the leſſour dye without heire, during the ſtate of the tenaunt for tearme of life, by whiche the reuercion commeth to the Lorde by waye of eſchete, and after the rẽt of the tenaunt for terme of life is behind, the Lord maye diſtraine the tenant for the rẽt behind but he may not enter into the lãd by force of

the condicion &c. for this that he is not heire to the feoffoure &c.

¶ Alſo if land be graũted to a man for terme of yeres vppon a condicion, that if he pay to ỹ graũtor within two yeres xl. markes, ỹ then he ſhal haue the land to him and to his heires &c. In this caſe, if the grauntee entre by force of ỹ graunt, & after he paieth to the grauntour xl. markes wtin the two yeres yet he hath nothing in the land but for terme of ỹ ñ. yeres, for this ỹ no liuery of ſeiſin was to him made at the beginning, for if he had had frankteneñt & fee in this caſe becauſe he hath performed the cõdiciõ, thẽ ſhoulde he haue frankteneñt by force of ỹ firſt graunt where no liuery of ſeiſin was made therof, which ſhould be againſt reaſon &c. But if ỹ graũtor had made liuery of ſeiſin to ỹ graũtee by force of ỹ grãt. thẽ hath the grantee ỹ frãketeneñt & ỹ fee vpõ the ſame cõdicion.

¶ Alſo if landes be graunted to a man for terme of fiue yeres, vppon condicion that he pay to the grauntour within the firſte two yeres xl. markes ỹ then he ſhal haue fee, or els but for terme of the fiue yeres and liuery of ſeiſin is made to him by force of the grãt. Now he hath in fee ſimple condicionel &c. & if in this caſe the graũtee pay not to ỹ graũtour the xl. markes within ỹ ſame two firſte yeres then immediatly after ỹ ſãe two yeres the fee and the frankteneñent is & ſhalbe adiudged to the grauntoure, for this ỹ the graun

grauntour may not after the two yeres incontinente enter vpon the grauntee, for this ỹ the grauntee hath yet title by three yeres to haue and occupy the land by force of the fyne graunte. And so for this, ỹ ỹ cõdiciõ of ỹ parte of the graunte is broken and the grauntour may not enter, the lawe shal put the fee in franketenement in the grauntor. For if ỹ grãtour in this case made wast thẽ after the breakinge of the condiciõ &c. & after the two yeares the grauntoure shal haue his writte of wast, & this is a good prooke ỹ the reuercion is to him &c. But in such case of feoffementes vppon condicion wher the feoffoure maye enter lawfully for the condiciõ broke &c. There ỹ feoffour hath the franketenemẽt before the entre &c.

¶ Also if a feoffement bee made vppõ suche condicion ỹ the feoffee shal geeue the land to the feoffour, and to the wife of the feoffour to haue and to hold to them, and to the heirs of their twoe bodies engendred, and for defaute of such issu, to remayne to the righte heires of the feoffour. In this case if ỹ husbande die, liuinge the wife before estate in ỹ taile made to him; then ought the feoffee by the lawe to make estate to the wife, as lyke to the condiciõ, & as like to the entente of ỹ condicion as he may make it, that is to saye to lette the lande to the wife for terme of life without impechemente of waste, the remainder after her decease to the heirs engẽ-

dyed of the bodye of her husband & hers, & for defaut of such issue, the remainder to the right heires of the husbande.

¶ And ỳ cause why the lease shalbe made in this case to the womā sole wout empechmēt of wast is for this ỳ the condicion is, ỳ the state shalbe made to the husband & his wife in the taile. And if such estate had bē made in the life of the husband thē after the death of her husband, shee had estate in the taile sole, which estate is wout empechement of wast & so it is reason ỳ if after a man maye make estate to the intent of ỳ condiciō &c. ỳ he shal make it &c. though ỳ shee cannot haue estate in the taile as shee might haue had, if ỳ gift in the taile had bē made to the husband, & to her in the life of her husband &c.

¶ Also in this case if ỳ husband & the wife haue issue & die before ỳ gift in ỳ taile made vnto him &c. thē ought the feoffee to make estate to the issue & to the heires of the father & mother engendred, & for defaut of such issue &c. the remainder to the right heirs of ỳ husbād &c. & the same law is in other cases semblable. And if such a feoffor will not make suche estate whē he is reasonably required by thē ỳ ought to haue estate by force of ỳ condiciō &c. Thē may the feoffour & his heirs ēter &c.

¶ Also if a feoffemēt be made vpon condicon that the feoffee shal enfeoffe many mē to haue and to holde, to them and to their heires for euer, and al they that oughte to

haue

haue estate, dye before any estate made vnto thē, then ought the feoffee to make the estate to the heirs of him ẏ suruiue of thē, to haue & to hold to him & ẏ heirs of him ẏ suruiued &c. Also if a feoffemēt be made vpō condicīō to enfeoffe an other, or to geeue in the tayle to another &c. if the feoffee before the perfourming of the condicion enfeoffe a straunge psō or make a lease for terme of life, thē may the feoffour or his heires enter &c. for this. ẏ hee hath disabled him selfe to perfourme the condicion, in so much ẏ hee made estate to an other &c. In such maner it is, if the feoffee before the condicīō perfourmed, let the sāe land to a straūger for terme of yeres. In this case the feoffour or his heires may enter &c, for this that the feoffe hath disabled himselfe to make estate of the tenementes according to that, that was in the tenements when estate therof was made vnto him, for if hee wyll make estate according to the condicion &c. then may the feoffee for terme of yeres enter and put out him to whome the estate is made &c. and to occupy this during his terme, and manye haue said, that if such a feoffemeēt be made to a man sole vpon the same condicīō and before that he hath perfourmed the condicion he taketh a wife, then the feoffoure or his heire may incontinēt enter, for this that if he hath made estate according to the condicion, and after dieth, his wife shalbee endowed and may recouer her dower by a writ of

power &c. And ſo by takyng of a wife, the tenementes bee put in other plyte then they were at the time of the feoffement vpon condicio for this that no ſuch woman was dowable nor ſhould be endowed by the lawe &c.

In the ſame maner it is, if the feoffour charge ẏ land by his deed of rēt charge before ẏ performyng of the condicio or be bounde in a ſtatut ſtapl', or ſtatut marchāt, ẏ in ſuch caſes, the feoffour and his heirs may enter, Cauſa qua ſupra. For whoſoeuer cōmeth to the tenementes by the feoffemēt of the feoffee then the tenementes muſte be lyable, and be put in execucion by force of the ſtatute afore ſaid. But when the feoffour or his heirs, for the caſes aforeſaid haue entred ſo as ẏ ought as it ſemeth &c. Then al ſuch thinges that be fore ſuch entre maye trouble or encomber ẏ tenementes ſo geeuen vpon condicio, as to chinge ẏ tenementes be vtterly defeted &c.

¶ Alſo if a man make a deed of feoffemēt to an other, & in the deede is no condicyon &c. and when the feoffoure will make to him liuery of ſeiſin by force of ẏ ſame deed, hee maketh liuery of ſeiſin vppon certeine condicio &c. In this caſe nothing of the tenemēt, paſſeth by the dede, for this ẏ the cōdicio is not compriſed in the deed, & ẏ feoffemēt is of ſuch force as if no ſuch ded had bē made therof &c.

¶ Alſo if a feoffement be made vpō ſuch condicion, that the feoffee ſhal alien the land to a man. this condicion is void, for this, ẏ when a man

a man is enfeoffed in landes or tenementes he hath power to alene them to some ꝑſon by the lawe. For if ſuch condicion ſhoulde bee good, then the condiciō putteth him out of al the power that the lawe geueth, which ſhoulde be againſte reaſon, and for this, ſuch condicion is voide. But if the condicion bee ſuch, that ỹ feoffee ſhal not alien to one ſuch naming his name, or to any of his heires, or his iſſues &c. or ſuch other like, the which cō dicion taketh not away al the power of alyenaciō of the feoffee &c. than ſuch condition ys good.

¶ Alſo if tenemēntes bee geeuen in the taile, vpon ſuch condicion that the tenante in the tayle, nor his heires &c. ſhal not aliene in fee nor in taile, nor for terme of others life, but for theire owne liues &c. ſuche alienacion & cōdicion is good. And the cauſe is for this ỹ when he maketh ſuch alienacion & diſcon tinuance, he doeth contrarye to the entente, for which the ſtatute of Weſtminſter the ſe= cond was made, by which eſtatute, ỹ eſtates in the taile bee ordeined, for it is ꝓued by the woordes compriſed in the ſame eſtatute ỹ the entent of the making of ỹ ſame eſtatut was that the wil of the donour in ſuch caſes ſhould be obſerued. And when tenant in the taile maketh ſuch diſcōtinuāce, he dooth the cōtrary to ỹ &c. And alſo in eſtates in ỹ taile of any tenements when the reuerſiō of ỹ fee ſimple is in another ꝑſone when ſuch diſcon

tinuance

ance is made, then the fee simple in the reuer
sion, or the fee simple in the remainder is dis-
continued, and for to put out that the tenāte
in ỹ taile shal do no such thinge againſt righte
such condicions ar good, as it is aforesaid &c.

¶ Also a man may geue land in the taile vpō
such condicion, that if the tenant in the tayle
or his heires alien in fee, or in taile, or for ter
me of anothers life &c. And also that if al the
issues comming of the tenāte in the taile, bee
dead without issue, that then it shalbe leeful
to the donoure and to his heirs to enter &c. &
by such waye the righte of the taile maye be
saued after such discontinuance to the issue in
the taile if their be any, so that by way of en-
tre of the donour or of his heirs the taile shal
not be defeted by such condicion, & yet if the
tenāt in the taile in this case, or his heirs ma
ke any discontinuāce &c. he in the reuersiō or
his heirs after this ỹ the taile is determined
for default of issue &c. may enter into the land
by force of the sāe cōdiciō, & shal not be driuē
to sue a writ of Formedon in the reuersion.

¶ Also a man may not plede in any accion
that estate was made in fee, in the tail, or for
terme of life vpon condicion, but if he vouch
a record therof, or shew a writig vnder seale
prouing the same condiciō, for it is a commō
erudiciō & learnig that a man by pleding shal
not defete any estate of frāktenemēt by force
of any such condicion, but if he shew ỹ proofe
of such condiciō in writing &c. except it bee in

some

ſome eſpecial cauſe, but of chattels reals as of a leaſe made for terme of yeres, or of grāts of wardes made by wardens in chiualry, & of ſuche other &c. A man may plede ꝑ ſuche giftes or grantes were made vpon condicion &c. without ſhewing of any writing of cōdicion & in the ſame maner a man may do of giftes and grauntes of chatels perſonels & of contractes perſonels &c.

¶ Alſo thoughe that a man in ſome accion may not plede an action that toucheth & concerneth frāktenemēt without ſhewing of writing therof, as it is aforeſaid, yet a mā maye be holpen vpon ſuch cōdition by the verdite of twelue men taken at large in Aſſiſe of diſſeiſin, or in ſōe other actiō where ꝯ Juſtices wil take ꝯ verdite of ꝯ twelue iurrours at large. As put the caſe ꝯ a man ſeiſed of certaine lande in fee, letteth the ſame land for terme of life, without deed vpō condicio to yelde to the leſſoure a certaine rent, & for defaute of paiment a reenter &c. by force of which, the leſſour is ſeiſed as of franketenement & after the rent is behinde, by which ꝯ leſſoure entreth into the land, & after the leſſee arraineth an aſſiſe of Nouel diſſeiſin of ꝯ land againſte the leſſour the which pleadeth ꝯ he doth no wrong, ne no diſſeiſin and vpon this the aſſiſe is taken.

¶ In this caſe the recognitours of ꝯ aſſiſe may ſay & yelde to the iuſtices their verdit at large vpon al the matter, as to ſaye that the

de=

defendaunt was seised, & so seised, let ꝯ sāe land to the plaintife for terme of his life, to yeld to the lessour such annual rent payable at such a feaste & vppon such condicion ꝯ if ꝯ rēt bee behinde at any such feast ꝯ it ought to be paid ꝯ then it shalbe lawful to ꝯ lessour to enter &c. by force of which leale ꝯ plaintife was seised in his demn, as of franktenemt, & after the rent was behinde at such a feast in such a pere &c. for which the lessour entred into ꝯ lād vpon the poss. of ꝯ lessee, & prayeth the discretion of the iustices if this be a disseisin done to the pleintife or not. And thē for this ꝯ it appeareth to the iustices, ꝯ this was no disseisin done to the plaintife, in so much ꝯ the entre of the lessour was leeful vpon him, the iustices ought to geeue iudgemt, ꝯ the plaintife shal take nothinge by his writ of assise. And so in such case the lessour shalbe holpen, & yet no writing was neuer made of ꝯ cōdicīō, for as well as ꝯ tourours may haue knowlege of the condicion ꝯ was declared & rehersed vppon the lessee. In the same maner is of feoffemt in fee or in gift in the taile vpon condicion thoughe neuer writtinge were made therof &c. And as it is said of a verdite at large in assise &c.

¶ In this sāe maner it is of a write of entre founded vpon disseisin, & in al other accions where the iustices will take a verdite at large there where the verdite at large maketh ꝯ nature of the matter put in the issue.

Also

¶ Also in such case wher the ꝑquest may say ther verdit at large, if they wil take vpō thē the knowlege of the law vpō ꝯ matter, they may say their verdit general as it is put in ther charge. as in ꝯ case aforesaid they may wel say ꝯ the lessor disseised not the lesse if they will ꝛc.

¶ Also in the same case, if ꝯ case were such that after this that the lessour had entred for defaut of payment ꝛc. that the lesse had ētred vpon the lessoure, and him disseised. In this case if the lessour arraineth an assise against the lessee, the lessee may barre him of his assise, for hee maye plede against him in barre howe the lessoure ꝯ is plaintife made a lease to the defendaunt for terme of life, saunge the reuersiō to the plaintif, ꝯ which is a good plee in barre, in so much ꝯ hee knowlegeth the reuersion to be to the plaintife, & in this case hath no matter to helpe him, but the condicion made vppon the lease, & that he maye not pleade, for that he hath no writting, & in so muche ꝯ he may not aunswere to ꝯ barre he shalbe barred. And so in this case ye may lee ꝯ a man is seised and he shal haue no assise. And yet if the lessee be plaintife, and the lessour defendant, he shal barre the lessee by verdite of the assise. But in this case wher ꝯ lessee is defendāt, if he wil not plead the said plee in barre, but pleade no wronge nor disseisin ꝯ the lessour shal recouer by assise ꝛc. causa qua supra.

¶ Also because such cōdicions be most com

monly put & ſpecified, in dedes indented, ſõe litle thinge ſhalbe ſaid heare to thee my ſõne of indentures & of a deede poll cõteining condicions. And it is to weete ỹ if ỹ indenture bee bipertite or tripti te or quadripartite, al ỹ parties & the indenture be but one deed in ỹ law & euery partie of the indenture is of him ſelfe of as greate force & effect, as al ỹ pties together. And ỹ making of indentures is in two maners. One is to make thẽ in ỹ third pſon another maner is to make thẽ in ỹ firſt perſon. The makinge in the third pſõ is as in ſuch forme. This indẽture made betwene A. of B. of ỹ one parte, & C. of D. of ỹ other parte, witneſſeth ỹ the forſaid A. of B, hath geeuen & graũted & by this preſẽt deed indẽted, hath cõfirmed to ỹ forſaid C. of D. ſuch land to haue &c. vpon the condicion &c. In witneſſe whereof, ỹ parties beforeſaid interchaungeably haue put to their ſeales, or els thus. In witneſſe wherof to the one party of this indenture remaining w̃ ỹ ſaid C. of D. ỹ forſaid A. of B. hath put to his ſeale, & to ỹ other part of the ſaide indẽture remaining w̃ ỹ ſaid A. of B. the ſaid C. of D. hathe put to his ſeale geeuen &c. Suche indenture is called indentures made in the thirde perſon for this ỹ ỹ verbes be in ỹ third pſõ & ſuche fõrme of indenture is ỹ more ſure makinge, for ỹ it is more commonly vſed the making of indẽtures in ỹ firſt pſõs is in ſuch forme

¶ To al true Chriſtian people to whõ thys preſent

ꝑsent writinge indented shal cõe A. of B. gretinge in our lord euerlasting. Knowe ye mee to haue geeuen & granted, & by this my ꝑsent deed indented to haue cõfirmed to C of D. such lande &c. Or els thus. knowe all mẽ ẏ be ꝑsent, & them ẏ be to come, ẏ A. of B. haue geuen & granted, & by this my ꝑsẽt deed indented haue cõfirmed to C. of D. such land &c. to haue &c. vpõ ẏ condicion folowinge. In witnes whereof, aswel I ẏ said A. of B. as ẏ forsaid C. of D. to these indẽtures interchangeably haue put to our seals or els thus. In witnes whereof, to one parte of this indenture I haue put to my seale, & to ẏ other part of the same indenture ẏ forsaid C. of D. hath put to his seale &c.

¶ And it seemeth ẏ such an indenture made in the firste person, is as good in ẏ lawe as ẏ indenture made in the third persõ, whẽ both parties haue thereto put there seales, for in ẏ indenture made in the third person or in the first person, if mencõ be made ẏ the grantor hath set his seale onely, and not the grantee, then is the indenture onely the deede of the grauntour. But where a mencion is made ẏ the grauntee hath set his seale to ẏ indenture &c. then is ẏ indenture as wel the deede of ẏ grauntour, as the deed of the grauntee, & thus it is the deed of both, & also euery parte of the indenture is the deede of both parties in such case &c.

¶ Also if estate be made by indenture to a man

man foꝛ terme of his life, the remainder to ā other in fee vppon condicion &c. and if the tenante foꝛ terme of life hath ſet his ſeale to ẏ partye of the indenture, and after dieth & he in the remainder &c. entreth by foꝛce of his remainder, in this caſe hee is holden to pfourme al the condicions cōpꝛiſed within ẏ indēture as the tenante foꝛ terme of life ought to doe in his life. and yet he in the remainder neuer ſeyſed any parcel of the indenture, but the cauſe is, that in ſo muche that he entreth and agreeth to haue the lande by foꝛce of the indenture he is holden to perfourme the condicion within the indenture if hee will haue the lande &c.

¶ Alſo if a feoffemēt bee made by deed Poll vpon condicion &c. And foꝛ this that the cōdicion is not perfourmed the feoffour ētreth and happethe ẏ poſſeſſion of the deede poll if the leſſee bꝛinge an accion of ẏ entre againſt the feoffour, it hath ben queſtioned if the leſſour may plede the condicion &c. by the deed poll againſte the feoffee, and ſome haue ſaid, nay, in ſo much that it ſemeth vnto them ẏ a deed poll, and the pꝛoperty of the ſame deed appertaineth to him to whome the deede is made, & not to him that made the deed. And in ſo much that ſuch a deed appertaineth not to the feoffour, it ſeemeth to them ẏ he maye not plede this deede &c. And other haue ſaid the contrarye, & haue ſhewed diuers cauſes One is, if the caſe bee ſuch that in ẏ acciō be

twene thē if the feoffee plede the same deede & shew this to the court. In this case in so much ỳ ỳ deed is in ỳ court, ỳ feoffour may shew to the court how in ỳ deede bee diuers cōdicions to bee performed of ỳ party of ỳ feoffee, & for this ỳ they be not performed he entred &c. & therto he shalbee receiued by the sāe reason when the feoffour hath the deede in hād & sheweth it to ỳ court he shalbee wel receyued to pleade of this &c. And namelye whē ỳ feoffour is pryuy to ỳ deed, for he ought to be pryuy to ỳ deed whē he may ỳ deed

¶ Also if two menne make or doo a trespasse to another, the which releasethe to one of them by his deed, al actions personels &c. Notwithstandinge, he sueth an actiō of trespas against the other the defendāt may wel shewe ỳ the Trespasse was donne by him & another his felow, & ỳ the plaintife by the deed ỳ he sheweth foꝛthe released to hys felow al actions personels, & yet such deede appertaineth to his felowe & not vnto him, but for this ỳ he may haue aduantage by ỳ deed, if he may shew the deed to the court he may wel plead therefore by the same reason in the other case whē then the feoffour ought to haue aduantage by the condicion cōprysed & the deede poll.

¶ Also if ỳ feoffee gaue or grāted ỳ deed pol to ỳ feoffor, such grāt shalbee good, & thē the deed & ỳ ppty of ỳ deed, appertaineth to the feoffor. And whē ỳ feoffor hath ỳ deed ī hād

pledeth it to the court, it shalbe ỹ more vnderstand ỹ he came to the deed by a lawefull mean thē by a forcious mean, & so it seemeth ỹ they may wel plead such a deed pol ỹ comprehendeth cōdicion &c. if he haue ỹ deede, in hande &c. Ideo sēper quere de dubijs, quia p̄ raciones p̄euntur ad legittimā racionem.

¶ Estates that men haue vppon condicō in the law be such estates that haue a condycion in the law annexed to them though it be not specyfied in writtinge, so as a man grāt by his deed to another the office of a Parker, shippe of a Parke, to haue and to occupy ỹ same office for terme of his lyfe, the estate that he hath in the office, is vpon condycon in the law, that is to say, that the Parker wel and truelye shall keepe the parke, & do this that to his office appertaine the to doe, or otherwise, that it shal bee lawful to the grauntour and to his heires to put him oute and to graunt that to another if he will &c. And such condicion as is vnderstand by the law to be annexed to some thing is as strong as if the condicō wer set or put in writting. In ỹ same maner it is of graūtes of offices of stewardis, constables, bedles bailifes, & other officers. But if such office be graūted to a man, to haue and to occupy by him or by his deputie, then if the office bee occupyed by him or by his deputie as it ought by ỹ lawe to be occupyed, this suffilethe for him or els the grauntour or his heirs may put him out

as

as it is aforesaid.

¶ Also estates of lādʒ or tenemēts may be vppō cōditiō in ẏ law, though ẏ vpō the estate made, there was no reherſal made of ẏ cōdiciōs, as put ẏ case ẏ a lease be made to ẏ husband & his wife, to haue & to hold to thē during ẏ couerture betwene thē, in this case they haue estate for terme of their two liues vpō cōdiciō in ẏ law, ẏ is to say if one of thē die, or if diuorce be made betwene thē, ẏ thē it shalbee leeful to ẏ lessor & his heirs to enter &c. & ẏ they haue estate for terme of their two liues it is prooued this. Euery mā that hath estate or franktenemēt in any lāds or tenemēts, either he hath estate in fee, or in fee tail, or for terme of life or for terme of anothers life, & yet by such lease they haue frāktenemēt But they haue not by ẏ grāt fee, nor tail nor for term of anothers life, Ergo they haue estate for term of their two liues, but this is vpō condiciō in ẏ law in forme aforesaid, And in this case if they make wast the lessor shal haue against thē a writ of waste, supposing by his writ. Quod tenent ad terminū vite &c. but in his plee. he shal declare howe & in what maner the lease was made in ẏ same maner it is if ā abbot make a lease to a man to haue & to holde during ẏ time ẏ ẏ lessor is abbot. In this case the lessee hath estate for terme of his owne life, but this is vppō cōdicion in lawe ẏ is to say ẏ yf ẏ abbot die, or resigne or be deposed, it shalbee

 lawful to

to his ſucceſſoures to enter &c. Alſo a men may ſee in the booke of aſſiſe, Anno 38. E. 3. a plee of aſſ. in this forme ꝑ enſueth, aſſiſe of nouel diſſeiſin was cõetime brought againſt one A. ꝑ pleaded to the aſſiſe, & was foũd by verdict ꝑ the auncеſter of ꝑ plaintife deuiſed ꝑ tenements, to be ſold by ꝑ defendãt ꝑ was his executor to make diſtribucion of the mo ney for his ſoule, & it was found ꝑ a man af ter ꝑ death of the teſtator rẽdered him a cer tain ſũme of mony for ꝑ tenemẽts but not to the valu, & ꝑ the executor after held the tene mẽts in his owne hãd by two yeare to the in tent to haue ſold the tenemẽts more deerer to ſome other, & it was found ꝑ hee had al this whyle after taken the profites of the tene mẽts to his owne vſe. Wout any thinge doing for the ſoule of the dead. Mowbray, the ex cutour in ſuch caſe is holden by the lawe to make the ſale as ſoone as hee may after the death of the teſtatour & it is founde that hee refuſed to make the ſale & ſo the default was in him, & alſo by force of the deuiſe hee was holden to haue put al the profites of the ſaid tenements to the vſe of the dead, & it is foũd ꝑ he hath taken them to his owne vſe and ſo another default is i him. Wherfore it was adiudged that the plaintife ſhould recoũ &c. And ſo it appereth by the ſaid iudgement ꝑ by force of the ſaid deuiſe the executour had none eſtate nor power in the tenemẽtes but vpon condicion in the lawe &c. And in ſuch ca

ſes

ſes it needeth not to haue ſhewed any deede rehearſing the condicions. &c. Ex paucis dictis intendere plurima poſſis. More ſhalbe ſaid of cõdicõs in the Chapiter of diſcentes ꝑ taketh away entre and in the chapiter of releſſes & in the chapiter of diſcontinuaũce.

¶ Diſcentes. Cap. vi.

DIſcentes ꝑ take away entres, be in two maners, that is to ſay, where ꝑ diſcẽt is in fee or in fee taile. Diſcent in fee ꝑ takethe away entry is if a man ſeiſed of certain lãds or tenementes is diſſeiſed, & the diſſeiſoure hath iſſue & dieth of ſuch eſtate. But nowe the tenementes diſcend to the iſſue of the diſſeiſour by courſe of ꝑ law as heire vnto him.

¶ And for this that the law puttethe the lands or tenements vpon the iſſu, & the iſſue commeth to the tenements by courſe of ꝑ law & not by his owne deede, the entry of the diſſeiſy is taken away, and is therof put to his writ of entry vpon diſſeiſin againſt ꝑ heire of the diſſeiſour to recouer the land.

¶ Diſcente in the taile that taketh awaye entry is if a man be diſſeiſed, & the diſſeyſour gyueth the ſame lande to another in the taile and the tenaunte in the taile hathe iſſue and dieth ſeiſed of ſuch eſtate, & the iſſue entreth in this caſe the entry of the diſſeiſi is takẽ awaye, and hee is putte to ſue againſt the iſſu of the tenaũt in the taile a writ of entry vp-

pon disseisin &c.

¶ And note well ꝯ in suche discentes that take away entres it behoueth that a mā die seised in his demesne as in fee taile, for dying seised for terme of life or for terme of anothers life shal neuer take away the ētry &c.

¶ Also a discēt of reuersiō or of a remainder shal neuer take away entry &c. so ꝯ in suche cases ꝯ take away ētries by force of discēts it behouethe ꝯ hee that dyeth seised haue fee & franktenement at the time of his dying, or els such discent taketh not away entry.

Also as it is said of discēts ꝯ discēd to the issue of him ꝯ dyeth seised &c. ꝯ same law is wher they haue no issue, but ꝯ tenemēts discend to ꝯ brother or to ꝯ sister, or to ꝯ vncle or to sōe other cosin of his ꝯ dieth seised &c.

¶ Also if there be lord & tenant and the tenaunt be disseised, & the disseisour alieneth to another in fee, & ꝯ alien diethe wꝫout heire, & the lorde entreth as in his escheate. In this case the disseisi may enter vpon the lord for this that the lord commeth not to the lande by discent but by escheate.

¶ Also if a man seised of certaine land in fee or in fee taile vpō condition to yelde certaine rēt or vpō other cōdiciō thoughe ꝯ suche tenāt seised in fee or in fee taile die seised, yet if ꝯ cōdiciō be broken in their life or after their decease &c. this taketh not away the ētry of ꝯ feoffor nor of the donor or of their heires for this ꝯ the tenācy is charged wꝫ the condicion

dicion and the estate of the tenancie is condi-
cionel in whose hands so euer the tenaūcy
shal come &c.

¶ Also, & if such a tenant vpon cōdiciō be dis
seised & the disseisor die thereof seised. & ỹ lād
discendeth to the heire of ỹ disseisor, now ỹ ē-
tre of ỹ tenant vpō condiciō ỹ was disseised
is taken away, but if the condiciō be broke
&c. then may ỹ feoffor or ỹ donor ỹ made the
estate or their heirs ēter &c. causa qua supra.

¶ Also if a disseisor dye seised, & his heirs ē
ter &c. the which endoweth the wife of ỹ dis
seisor of the third parte of the tenements, in
this case as to the third part ỹ is assigned to
ỹ wife in dower, in continent anō after ỹ ỹ
wife entreth & hath possession of the sāe third
parte, the disseisy may lawfully enter vpon ỹ
possession of his wife in the same third part.
And the cause is for this, ỹ when the wife
hath her dower, she shalbe iudged rather im
mediatly by her husbād & not by the heire, &
so as to the fanktenement of the same thirde
parte, the discēt is defeated, & so ye may see
how before ỹ dowmēt the disseisy might not
enter into any part &c. & after the dowment
hee may enter vpon the wife, & yet hee maye
not enter vpon the other twoe parties ỹ the
heire of the disseisour hath by discent &c.

¶ Also if a woman be seised of lād in fee,
whereof I haue right & title to enter, if that
woman take an husband and haue issue bee-
twene them, and after the wife dieth seised,

and after that the husbād dieth, & ỹ issue entreth &c. in this case J. may enter vpō ỹ possession of the issu, for this that the issue commeth not to the tenemts immediatlye by discent after the death of his mother.

¶ Also if a disseysor ēfeoffe his father, & the father entreth & dieth of such estate seised by which the tenements discend to the disseisor as to the sone & heire &c. In this case the disseisi may wel enter vpon the disseisour, notwithstandinge the discent, for this, ỹ as to ỹ disseisin, the disseisor shalbe adiudged in, but as the disseisour, notwithstāding the discēt.

¶ Also if a man seised, of certaine landes in his demeane as of fee, hath issue two sonnes and dieth, & the yonger sonne entreth by abatement in the lande the which hath issu, & of this dieth seysed, and the tenementes discende to the issue, and the issue entreth into the lād, in this case ỹ elder sonne or his heirs may enter by the lawe vppon the issue of the yonger sōne, notwithstanding the discente, for this that when the younger sōne abated in the land after the deathe of his father, before any entry of the elder, the law entendeth that he entreth, in clayeminge as heire vnto his father, & for this that the elder brother claymethe by the same title that is to say, as heire vnto his father, hee & his heires may enter vpon the issu of the yonger brother not withstanding the discent &c. for this ỹ they clayme by one selfe title, and in the same ma-

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ner it shalbe if there bee made discentes frō one issue of ỹ yōger sōne &c. But in such case if the father were seised of certain lāds in fee and hath issu two sonnes & dieth, & the elder sonne entreth & is seised &c. And after ỹ yonger brother disseiseth him by which disseisin he is seised, of fee, & hath issue, and of suche estate dieth seised. then the elder brother may not enter, but is put to his writ of entre vpō disseisin for to recouer the lād. And ỹ cause is for this ỹ the younger brother commeth to the tenementes by a wrong disseisin made vnto his elder brother. And for that wronge the law may not entēd ỹ he claimeth as heir to his father, no more then a strange persōe that hadde disseised the elder brother ỹ neu had any title &c. And so may ye see the diuer sitie where the yonger brother entreth after the death of his father before any ētry made by ỹ elder brother in such case &c. And wher ỹ elder brother ētreth after the deathe of his father, and is disseised by the yonger brother &c. In the same maner if a man seised of certaine land in fee hath issue two daughters. & dieth, & the elder daughter entreth in ỹ land claiminge al the land to her. & therof onely taketh the profites. and hath issue and dieth seised, by which her issue entreth, which issu hath issue and dieth seised, & the seconde issue entreth &c. et sic vltra. yet the younger daughter and her issue as to the haulfe maye enter vpon euerye issu of the elder daughter

not

notwithstanding such discent, for this ꝯ they claime by one selfe title ꝛc. But in suche case if both two sisters come into the land to ēter after the death of their father, & therof were seised, & after the elder sister therof disseised the ponger sister of that, ꝯ to her belōgeth, & therof is seised in fee, & hath issue, & of suche estate dyeth seised, by which the tenementes discend to the issue of the elder sister, thē the ponger sister or her heires may not enter ꝛc. causa qua supra.

Also if a man seised of certain land hath issue twoe sōnes, & the elder brother is bastard, and the ponger brother mulier, and the father dyeth, & the bastard entreth and claymeth as heire vnto his father, and occupieth the land al his life without any entrye made vpō him by the mulier, and the bastard hath issue and dyethe of such estate seised in fee, & the lande discendeth to his issue and his issue entreth ꝛc. in this case the mulier is without remedy, for hee maye not enter nor hee shall haue no accion for to recouer ꝯ land, for this that it is an auncient lawe in such case vsed, but it hath ben an oppinion of some mē that that shalbe vnderstande where ꝯ father hath a sonne a bastarde by a woman, and after hee weddeth the same womā, and after the spousayl he hath issue by ꝯ same womā a sōne or a daughter mulier. & ꝯ father dieth ꝛc. if such a bastard enter ꝛc. and hath issue, and dyethe seised ꝛc. Then shal ꝯ issue of such a bastard

haue ỹ land clerely to him as it is afore saide &c. And not any other bastard borne of ỹ mother ỹ was not espoused to his father, and this is a good & reasonable opiniõ. For such a bastard borne before the espouses solempnised betweene his father and his mother by the lawe of holy Church is mulier thoughe that by the lawe of the land hee is a bastard borne, and so he hath colour of entry as heire to his father for this that hee is by one lawe mulier, that is to saye by the lawe of holye Church. But otherwise it is of a bastarde ỹ hath no maner of colour to enter as heire in so much ỹ he may not in no lawe bee sayde mulier &c. for such a bastard is saide. Quasi nullius filius. But in suche case afore sayde where the bastard entreth after the death of his father, and the mulier putteth him out, & after the bastarde disseiseth the mulier, and hath issue and dyeth seysed, and the issue entreth, then the mulier may haue a writte of entrie vpon disseisin against the issue of the bastard, & recouer the lande &c. And so may yee see the diuersitie where such a bastarde continueth his possession al his life without any interrupcion, and where the mulier entreth and interrupted the possession of such a bastarde.

¶ Also if a chyld within age haue title & cause to enter into any lands or tenements vpõ an other ỹ is seised in fee or in fee taile of ỹ same lãds & tenemẽts, if such a mã ỹ is so seised die

of

of such estate, so seysed & the tenementes discend to his issue during the time ꝑ the child is within age such discent shal not tol the entry of the child, but he may enter vpon the issue that is by discent &c. for this that no laches shalbe adiudged in a child within age in such case &c.

¶ Also if the husband & his wife, as in right of the wife haue title & righte to enter in the tenements that another hath in fee, or in fee taile, & such a tenant dieth seised &c. In such case ꝑ entry of the husband is taken away vpō the heire ꝑ is by discēt. But if ꝑ husbād die then the wife may wel enter vpō ꝑ issue by discent, for this ꝑ the laches of the husband shal not turne to ꝑ wife & to her heire in prejudice nor in damage in such case but ꝑ the wife & her heires may wel enter when such discent is during the couerture &c.

¶ Also if a man that is not of whole minde that is to say in latin. Qui non est compos mētis, hath cause to enter in any such tenemēts in such discēt vt supra be had in his life during ꝑ time ꝑ he was out of his mind, & after die, his heires may wel enter vpō hym ꝑ is in by discent. And in this may ye see a cause ꝑ ꝑ heir may enter, & yet his aūcestor ꝑ had the sāe tytle may not enter for ꝑ he was out of his mind at the time of such dyscent if he wil enter after such a discent, if accion vpō this be sued against him, he hath nothig for him to plede or to helpe him, but say ꝑ he

was out

out of mind at the time of such discēt &c. And he shal not be receiued to say this, for this ꝑ no mā of ful age shalbee receiued in any ple by ꝑ law to disalt or disable his owne perſō. But ꝑ heire may wel disable ꝑ person of his ancestor for auantage of the heir in such case for this ꝑ no laches may be adiudged by the lawe in him ꝑ hath no discresciō in such case. And if such a man out of his minde make a feoffemt &c. he may not enter ne haue a writ called Dū non fuit cōpos mentis &c. Causa qua supra. But after his death, his heir may wel enter or haue the same writ. Dū non fuit compos mentis at his election &c.

Also if I. be disseised by a child wtin age ꝑ alieneth to another in fee, & the aliē dieth seised, & the tenementes discended to his heire child being wtin age mine entry is taken away. But if the child wtin age enter vpon ꝑ heir ꝑ is in by discēt, as he wel may for this ꝑ discent was during his nōage, then I. may wel enter vpō the disseisi, for this ꝑ by his entre he hath defeated & adnulled ꝑ dyscēt. And in ꝑ same maner it is where I. am seised, and the disseisour maketh a feoffemt in fee vpon condicion &c, And the feoffee dieth of such estate seised &c. I may not ēter vpon the heire of the feoffee. But if the cōdiciō be broken so ꝑ by suche case the feoffoure entrethe vpō the heire, now may I. wel enter for this that when the feoffour or his heires enter for the condicion broken, the discent is

vtterlye

vtterly defeted.

¶ Also if J. be disseised, and the disseisour hathe issue and entrethe into religion, by force of which ỹ lāds discendeth to his issue, in this case J. may wel enter vpon the issue & yet ther was a discent. But for this that such discent commethe to the issue by the fathers deed, that is to say, for this that hee entred into religion &c. and the discent cōmeth to him by the deed of God, that is to saye by death &c. mine entry is congeable, & lawfull for if J. arraine assise of Nouell disseisin against my disseisour, though ỹ he after enter into religiō this shal not abate my writ. But my writ this not withstanding shal abide in his force & strength, & my recouery against him shalbee good by the same reason, ỹ discēt ỹ came to his issu by his own deede may not put me fro mine entry &c.

¶ Also if J. let to a manne certaine lands for terme of twenty yeares, & another disseyseth me, and putteth out the terme, & dieth seysed and the tenements discend vppon hys heire, J may not enter, and yet the lessee for terme of yeres may wel enter for this ỹ by his entre he putteth not out the heire that is in by discent frō ỹ franktenement that vnto him discended, but onelye to haue tenemēts for terme of yeres, ỹ which is no expulsinge of the franktenement of the heire that is in by discente. But otherwise it is where my tenant for terme of life, is disseised &c. causa

qua

qua ſupra &c.

¶ Alſo it is ſaid ỹ if a man ſeiſed of tenemẽtes in fee by occupacion in time of warre, & dieth therof ſeiſed in time of warre & ỹ tenemẽts diſcend to his heir, ſuch diſcent putteth out no mã of his entry. And of this a man may ſee a plee in a writ of Ayel. An. 8. E. 2.

¶ Alſo no dying ſeiſed where al the tenemẽts commeth to another by ſucceſſion ſhal take away ỹ entry of any perſon &c. For of prelats abbots, pryours, deans or perſons of churches &c. though ỹ there were twenty ſucceſſours, this putteth no mã from his entre &c. More ſhalbe ſaid of diſcentes, in ỹ Capiter of continual claime &c.

¶ Continual claime. Cap. vij.

¶ Ontinual clayme is, where a man hathe right, and title to enter in any lãdes or tenementes wherof another is ſeiſed in fee or in fee taile, if he that hath title to enter make continual claime to the lands and tenements before the dying ſeiſed of him, ỹ holdeth the tenemẽts. Thẽ though ſuch a tenant die therof ſeiſed, & the lands & tenements diſcend to his heire, yet may hee that hath made ſuthe claime or his heires enter into the lands and tenementes diſcended, becauſe of ỹ continual claime made, notwithſtandinge ſuchs diſcent. As in caſe a man be diſſeiſed, & ỹ diſſeiſe maketh cõtinuall claime to the tenemẽtes

in the

in the life of the disseisour though the disseisour die seised in fee, & the land discendeth vnto his heirz, yet may the disseisi enter vppon the possession of the heire notwithstandinge such discent.

¶ In the same maner it is, if tenāt for terme of life alien in fee, he in the reuersion, or he in the remainder may enter vppon ẏ alien. And if such alyen die seised of such estate without cōtinual claime made to the tenements before ẏ dying seised of the aliene & the tenemēts be cause of the dying seysed of the aliene discend vnto the heire of the aliene, then may not he in the reuersiō, or hee in the remainder enter, But if he in the reuersion, or he in ẏ remainder ẏ hath cause to enter vpon ẏ alien made continual claime to the tenements before ẏ dying seised of the aliene, thē such a mā may enter after the death of the aliene as well as hee might in his life &c.

¶ Also if lands bee let vnto a mā for terme of his life, the remainder vnto another for terme of lyfe the remainder vnto the third in fee, if the tenaūt for terme of life alien to another in fee, & hee in the remainder for terme of life maketh continual clayme vnto ẏ land before the dying seised of the aliene, & after the aliene dieth &c. & after hee in ẏ remainder for terme of life dyethe before anye entre made by him.

¶ In this case hee in the remainder in fee may enter vppon the heire of the aliene, be

cause

cause of cōtinual claime made by him ꝑ made the remainder for terme of life, for this ꝑ such right that he hath to enter shal go & remains to him in the remaīder after him, in so much ꝑ he in the remainder in fee, may not enter vpō the alien in fee during the life of him in the remainder for terme of life, & because he might not make continual claime but when he had title to enter. But it is to see to thee my child how & in what maner such continual claime shal be made, & to learn this, three thigs ther be to vnderstande.

¶ The first thinge is if a man haue cause to enter in any lands or tenemēts in diuers townes within one shire, if he enter in any parcell of the landes or tenements ꝑ be in one towne in the name of the landes or tenements ꝑ be in one towne to which he hath right to enter within al the townes in the same shire, by such ētre he hath as good possession & seisin of such landes or tenements wherof he hath title to ēter as if he had ētred into euery peel, & this semeth great reason, for if a man wil enfeoffe another without deed, of certain lādes or tenemēts ꝑ he hath in many townes within one shire, & he wil deliuer seisin to ꝑ feoffee of parcell of the tenementes within one towne in the name of al the lands & tenemētes ꝑ he hathe in ꝑ same towne & in al the other townes &c al the said tenements &c. shall passe by force of the said liuerys of seisine to him to whome such feoffemēt in such maner is made. & yet

he to whõe such liuery of seisin is made, hath no right to al the lands & tenements in al the towns but because of ỹ liuery of seisin made of parcel of the lands or tenemẽts in one town a multo fortiori. It semeth good realõ ỹ whẽ a man hath title to enter into lands or tenements in diuers townes wtin 1. shire before any entry by him made. ỹ by the entry of him made in pcel of ỹ tenemẽts in one towne, in ỹ name of al ỹ lãds & tenemẽtz to the which he hath title to ẽter wtin the sãe shir, this is a seisin of al in him, & by such ẽtry he hath possessi on & seisin in deed as if he had ẽtred into eũy pcel &c. The second is to vnderstand, ỹ if a man haue title to enter into any landz or tenemẽtes if he dare not enter in ỹ same lands or tenementz nor any parcel therof, or doubte of beating, or for doubt of maimig, or for doubt of both, if he go & approche as nigh the tenemẽtz as he dare for such doubt, & claime by woords the tenemẽts to be his, incontment by such claime he hath a possession & disseisin in ỹ tenemẽtz as wel as if he had ẽtred in deed though he had neuer possession or seisin of ỹ same lands or tenemẽtz before the said claim. And that the law is such. it is wel proued by a plee of an assise in the booke of assise. An. 38 Ed 3. The tenure of which ensueth in thys fourme,

¶ In the county of Dorset before the same Iustices it was founde by verdicte of Assise, that the pleintife which had right by discent of he

of heritage to haue ỹ tenements put in plaint at the time of the death of his auncestor which was dwelling in the towne wher ỹ tenemẽtes were, & by word claimeth the tenements amõg his neighbours, but for doubt of death he durst not approche vnto the tenemẽts, but prayeth an assise. & vpõ ỹ matter fouñd it was awarded ỹ he should recouer.

¶ The third thing is to vnderstand within what time the claim ỹ is said continuall claim shal serue & helpe him that maketh ỹ claime & his heire, & as to this it is to weete ỹ he that hath title to ent, whether wil make his claim & if he dare approche vnto ỹ land, then it behoueth him to go vnto ỹ lande, or to parcel of it & make his claim. And if ỹ dare not approche vnto the land for dread of beating, maiming or death, thã it behoueth him to goe, & to approch as nigh as he dare toward the land or parcel therof, & make his claime. And if his aduersary ỹ occupieth ỹ lãd dye seised in fee or in fee tail, & in a yere & a day after such claim made by which ỹ tenements discẽd vnto his sõne as heire vnto him, yet may he that made the claim enter vpon the possession of the heires. But in this case after the yere and the daye that such claim was made, if nõe other claim be made, if the father then die seised, that morow after ỹ yere & the day, or at another daye after &c. than may not he that mad the claim enter. And therefore yf hee that made the clayme wyll bee sure alwaye that hys entre

shal not be take away by such discent, it behoueth him þ within the yere & the daye after the first claime to make another claim in the fourme aforesaid. And within the yere & the day after the secõd claim to make the third claime in the same maner, & within the yeare & the day after the third claime, to make another claim & so forth þ is to say, to make another claime within euery yere & day next after euery claime made during the life of his aduersarye, & thẽ at what time þ his aduersary dye, his entrie shal not be take away by no discent. And such claime made in suche maner is most cõmonly take & called cõtinual claime of him þ made þ claim. But yet in case aforesaid whe his aduersary dieth within the yeare & the daye next after the first claime, this is in the law a continual claime, in so much þ his aduersary died within the yere & the day after the same claim, for it is no nede for him that made the claime to make anye other claime, but at that time þ he made within the same yere & þ day &c.

Also if his aduersary be disseised within þ yere & a day after the claim, & the disseisour dieth therof seised within the yere and the daye &c. this dying seised shal not hurt him þ made claime, but that he may enter &c. For whosoeuer he bee that dieth seised within the yeare & the day after such claime, that shal not hurt him that made the claime, but that he may enter though there were many dyinges seised & many discentes within the yere & the day &c.

Also

¶ Also if a man bee disseised & the disseisour die seised wtin the yeare & thr day next after ꝑ disseisin done, whereby the tenements discēd to his heir, in this case the entre of ꝑ disseisie is taken a way, for the yere and ꝑ day ꝑ should helpe the disseisie in such case &c. shal not be taken frō ꝑ time of the title of entrie grow in vnto him, but only frō ꝑ time of ꝑ claime by him made in time afforesaid, & for ꝑ cause shal it be good for such a disseisy for to make his claim &c. in as short time as he may after ꝑ disseysin &c. Also if such a disseisour occupy ꝑ tād by xl. yeres wout any claim made by ꝑ disseisy &c. & ꝑ disseisie by litle space before ꝑ death of the disseisour make claime in ꝑ fourme afforesaide, if so it fortune ꝑ wtin a yere & a day after such claime ꝑ disseisour dieseised &c. the entre of ꝑ disseisie is congeable, & for this it shalbee good for such a man ꝑ made no claime ꝑ hath title to enter &c. whē he heareth ꝑ his aduersary lieth sick to make his claime &c.

¶ Also it is sayde in the cases put before where a man hath title to enter bycause of a disseisin &c. The same lawe is where a mā hath right to enter bycause of the title &c.

Also in this said pȝesidents may ye know my childe two things. One is where a man hath title to enter vpon a tenant in taile, if he make any such claime vnto the land &c. Thē is the state of the taile defeted. for ꝑ clayme is as an entrie made by him, & is of ꝑ same e

fect in the lawe as he were vpon the same tenements, and had entred in the same tenemẽtes as is aforesaid. And then when the tenãt in tayle immediatlye after suche clayme continueth his occupacion in the tenements, this is a disseisin made of the same tenemẽtz vnto hym that made the claime. Et sic p̃ consequẽs the tenant then hath fee simple &c.

The seconde thing is, that as oft as he ỹ hath right to enter maketh such claime, & this not withstanding his aduersary cõtinueth his occupacion &c. so oft ỹ aduersary doth wrong & disseisin to him ỹ made ỹ claim. And by this cause so often may he that made the same claime for euer such wrong and disseisin made vnto him haue a writ of trespas. Quare clausũ fregit &c. to recouer his damages &c. Or he may haue a writ vpon the statute of kinge Richard ỹ secõd made ỹ first yere of his reign supposing by his writ ỹ his aduersary hathe entred into the lands or tenemẽtz of him that made the claim wher his entre was not geuẽ by the lawe &c. & by such accion he shal recouer his dammages &c. And if the case be suche ỹ the aduersary occupy the tenemẽtz with force & armes, or with a multitude of people at ỹ time of such claim &c. Thẽ may he that made the claim for euery such time haue a writt of Forcible entry & recouer his treble damages.

Also here it is to see if the seruant of a mã that hathe title of entry maye by ỹ commaũdement of his maister make continual claim

for

for his master in his name, & it seemeth that in some cases he may do this, for if he by his cõmaundemẽt cõe to any parcel of the land & ther maketh claim &c. in the name of his master, this claim is good for his master, for this ỹ he hath done al that it behoued his master to do in such cases &c.

¶ Also, if a master say vnto his seruant ỹ hee dare not go vnto the land nor to any parcel of the land for to make his claim &c. & dare not approche more nigh vnto ỹ said lãd saue to such a place called Dale, & commaundeth his seruãt to go to the same place of Dale, & ther to make a claim for him &c. if the seruãt doe &c. this seemeth as good claim for his master as if he had bene ther in his owne person for ỹ the seruant did al ỹ his master durst do & ought to do by the lawe in such case.

¶ Also if a man be so sicke or so lame that he may not in no maner cõe to the lande nor to any parcel of the same, or if there be a recluse that he may not because of his order go out of his house &c. if such a maner persõ cõmaũd his seruant to go & make claime for him &c. and the seruant dare not go to the lande, nor to any parcel therof for doubte of beatinge, maime or death, and for that cause suche seruant commeth as nigh to the land as he dare for such dreade, and maketh this claime &c. for his master, it semeth that such claime for his master is good & strong in lawe, for els his master should be into great mischiefe, for

it may well be that such a person ỹ is sicke or lame, or reclusse, cannot find any seruant that dare go into the land nor to any parcel of yt to make the claim for him &c. But if ỹ master of such a seruant be in good health, & maye & dare wel go to the tenements or to parcel of it to make his claime for him &c. if such a master cōmaunde his seruant to goe to some parcell of ỹ land & make claim for him &c. And whē ỹ seruāt is in going to doe the cōmaūdmēt of his master, he heareth by ỹ way such things that he dare not go to any parcell of ỹ land for to make any claime for his master, & for that cause he goeth as nigh vnto ỹ lād as he dareth for dout of deth, & ther he maketh claim for his master in ỹ name of his master &c. It semeth that the doubt in ỹ law in such case shalbe if suche claim auaileth to his master not for this ỹ the seruant did not al this ỹ his master at the time of cōmaundemēt durst haue done.

¶ Also, some haue said that where a man is in prison & is disseised and the disseisour dieth seised during the time that the disseisye is in prison, by which tenements discend to ỹ heire of the disseisour, they haue said that this shal not hurte the disseisē that is in prison, but that he may wel enter notwithstanding such discēt for this that he may not make cōtinual claim when he was in prison. And also if such a one that is in prison be outlawed in an accion of debte or Trespas, or in appeal of robbery &c

he

he shal reuert such outlawry by writ of Error &c. because he was in prison at the time of outlawry against him pronounced.

¶ Also if a recouery be had by discent against such a one that is in prison, he shal auoid the iudgemēt by a writ of Errour, for this ꝑ he was in prisō at ꝑ time of such default made &c. and because that such matters of record shal not hurt thē ꝑ be in prison but ꝑ it shalbe reuersed &c. A multo fortiori. It semeth ꝑ a matter in deed, ꝑ is to say, suche discent has whē he was in prison, shal not hurt him &c. specially for this ꝑ he may not go out of prisō to make continual claime &c.

¶ And in the same maner it seemeth to thē where a man is out of the realme in the kings seruice for byslines of the realme, & if a mā be disseised when he is in the seruice of the king that such discent shal not hurt the disseisi, but for this ꝑ he might not make cōtinual claime &c. it seemeth vnto them that whē he cōmeth again into England he may enter again vpō the heire of the disseisour &c. For such a man shal reuerse an outlawry ꝑ is pronounced against him during ꝑ time ꝑ he is in seruice &c. Ergo a multo fortiori. Yee shall haue a de by the lawe in the other case &c.

¶ Also other haue said that if a man be out of ꝑ realme though he be not in the kings seruice, if such a man being out of the realme be disseised of landes or tenements within the realme, & the disseisour dye seised &c. the dys-

seysy

seysi being out of the realme, it semethe vnto them that when the disseisi commeth into the realme that he may well enter vpō the heire of the disseisour &c. & this semeth vnto thē for two causes &c.

One is, that he that is out of the realme, may not haue knowledg of the disseisin made vnto him by vnderstādig of ỹ lawe, no more thē ỹ a thinge done out of the realme may be tried within the same realm by ỹ othe of xij. men &c. & cōpel such a mā to make cōtinual claime which by the vnderstāding of ỹ law can haue no knowledge or cognisaūce of such disseisin made or done, this shalbee incōuenient namely when such a disseisin is don vnto him whē he was out of ỹ realme. Also the dying seysed was done when he was out of ỹ realme. For in such case he may not by possibilitie after the cōmon presumption make continuall claime, but otherwise it shalbe if the disseisye were within ỹ realme at ỹ time of ỹ disseisin or at the time of ỹ dying seised of the disseisor &c. Another matter the alledged for a proue. ỹ when the statute of king Edward the third ỹ xxxiij. yere of his raigne, by which statute no claim is out &c. ỹ law was such. ỹ if a fine were leuied of certein lands or tenements yf any ỹ was a straunger to the fine had right to haue & to recouer ỹ same lāds or tenemēts if he came not & made his claime therof within a yere and a day next after ỹ fine leuied he shalbe barred for euer. Quia dicibatur finis

quod

quod finem littibz imponebat. And ꝑ the law was such it is ꝓued by ꝑ statute of westm the second. De donis cõdicionalibus. wher it speaketh if ꝑ fine be leuied of tenements geuen in the taile &c. quod finis ipso iure sit nullus, nec habeãt heredes aut illi ad quos spectat reuersio licet plene etatis fuerint in anglia & extra ꝓlonã necesse apponere clameũ suũ. So it is ꝓued ꝑ if a straũger ꝑ hath righte vnto the tenements if he were out of ꝑ realm at the time of the fine leuied &c. shal haue no dãmage though that such fine was matter of record, by greate reason it seemeth vnto them that a disseisin & discẽt ꝑ is matt in deed shal not so greue him that was disseised whẽ he was out of the realme at ꝑ time of ꝑ disseisin, & also at ꝑ time ꝑ the disseisour died seised &c. but ꝑ he may wel enter notwithstandig such discent, and enquireth a manne disseised & hee arraign assise against the disseisour. & ꝑ recognitors of the assise challenge for ꝑ plaintife & the iustices of ꝑ assise wil be aduised of their iudgements vntil the next assise &c. & in the mean seasõ the disseisour dieth seised &c. If ꝑ said sute of the assise shalbe takẽ in law for the disseisin a continual claime, inso much ꝑ no defaut was vnto him &c.

¶ Also enquire if an abbot of a monastery by and during the time of vacaciõ a man wrongfully entreth in certain parcels of land of the monastery claimings the land vnto him and his heirs, & of that estate dyeth seysed, and

the

the land deſcendeth vnto his heirs, and after that an abbot is choſen and made abbot of ꝑ monaſtery, a queſtion is if the abbot may enter vpō the heire or not. And it ſemeth to ſōe that the abbot may wel enter in this caſe, for this that the couent in time of vacation was no perſon able to make cōtinual claime for no more then they be perſonable to ſue an actiō no more be they perſonable to make cōtinual claime for the couēt is but a dead body without hed, for in time of vacation a graūt made vnto thē is void, & in this caſe an abbot may not haue a writ of entre vpon diſſeiſin againſt ꝑ heire, for this ꝑ he was neuer diſſeiſed. And if the abbot may not enter in this caſe, thē he ſhalbe put vnto his writ of right ꝑ which ſhal be to hard for the houſe by which it ſemeth to them that the abbot may well enter &c. ꝙre de dubijs, legē bene diſcere ſi vis, quereris dat ſapere que ſunt legittima vere.

¶ Releſſes. Cap. viij.

RElesſes be in diuers maners, ꝑ is to ſay releſſe of right that a man hath in lands & tenements, and releaſe of accions reals & perſonels, and of other things, releas of all the right that a man hath in landes or teneměts &c, is commonly made in ſuche fourme, or to ſuch effect. Mouerint vniuerſi per preſentes me A. de B. remiſiſſe, relaxaſſe, & omnino de me et heredibꝰ meis quitē clamaſſe C. de D. totum ius. titulum, & clameum, que habui, habeo, vel quomodolibet in futuro habere potero

de ſ

re & in vno meſuagio cum partin. in ℣.
And it is to bee vnderſtād, that theſe wordes remiſiſſe & quiet clamaſſe) be of ſuch effect as theſe wordes, relaxaſſe &c. & alſo theſe wordes which be commonly put in ſuch dedes of releſes &c. ℣ is to vnderſtād. Que quouiſmodo in futurū habere potero, be as wordes void in ℣ law, for no right paſſeth by a releaſe, but the right that the leſſor hath at ℣ time of hys releſe made. for if it be father & ſōne, & the father be diſſeiſed. & the ſōne liuing, his father releaſeth by his deed to the diſſeiſor al ℣ right that he hath or may haue in the ſame tenemēts wout clauſe of warātiſe &c. & after the father dieth the ſonne may lawfully enter vpon the poſſeſſion of the diſſeiſour, for this that he had no right in the land liuing his father, but the right diſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releaſe of al the right that a man hath in certaine lāds it behoueth vnto him to whō the releaſe is made in ſuch caſe that he haue a free holde in the lands in deed or in the law at the time of the releaſe made, for in euery where he to whō the releaſe is made, hath a free hold in deed or in lawe at the time of the releaſe made &c. the releaſe is good frāktenāt in lawe, as if a man haue diſſeiſed another, & thereof dieth ſeiſed, by the which the tenemēts diſcende vnto his ſonne, howbeit that his ſonne enter not in the tenements, yet he hath a frāktenemēt in the lawe to him vpō him

and

the diſcent is caſt vpon him, & therfore the re
leaſe made is good ynough. And if he take a
wife ſo being ſeiſed in the law howbeit ꝑ her
neuer ētered in deed & dieth his wife ſhal haue
therof her dower. Alſo in ſuch caſe of releaſe
of al her right, howbeit ꝑ he to whō ꝑ releaſe
is made ne hath any thing in the frāktenement
neither in deed nor in lawe, yet the releaſe is
ynough, as if ꝑ diſſeiſor haue left iād ꝑ he hath
by deſſeiſin to another for terme of his life, ſa
ning the reuerſion to him, if the diſſeiſi or his
heirs releaſe vnto the diſſeiſor al the right et
ꝑ releaſe is good, for this ꝑ he to whō ꝑ re
leaſe is made, had in him a reuerſiō at ꝑ time
of ꝑ releaſe made. In ꝑ ſame maner if a leaſe
bee made to a mā for terme of life the remain
der vnto another for terme of life, ꝑ remain
der vnto the third in taile the remainder vnto
ꝑ fourth in fee, if a ſtraunger ꝑ hath the right
vnto the land releaſe al his right vnto any of
thē in ꝑ remainder, ſuch releaſe is good, for
this ꝑ euery of thē hath a remainder veſted
in him ſelfe, yet if the tenāt for term of life be
diſſeiſed & after he that hath right (ꝑ poſſeſſiō
being in the diſſeiſour) releaſe vnto one of thē
to whome the remainder was made, all his
right &c. That releaſe is voide, for ꝑ, that
he ne hadde in him no remainder in deede. but
al onely a right of a remainder at the time of
the releaſe made. Et nota, that euery releaſe
made to him that hath a reuerſion or remain
der in deed, ſhal ſerue & helpe them that haue

the

the franktenement as wel as them to whõe the releaſe is made if the tenãt haue ẏ releas in his hand &c. In the ſame maner a releaſe made to a tenãt for terme of life, or to a tenãt in the taile, ſhal enure vnto them in the reuer ſion or to them in the remainder as wel as to the tenant of franktenement, & ſhal haue a great aduantage of that, if ẏ they may ſhew it. And if there be lord & tenant & the tenaunt is diſſeiſed, & ẏ diſſeiſy releaſeth vnto ẏ diſſey or al the right ẏ he hath in ẏ ſeigniory or in the land, the releaſe is good & ẏ ſeignioury is extinct. And if the goods of the diſſeiſi be ta ken and of them the diſſeiſy ſueth a Replegia re againſte the lord he ſhal compell the lord to auow vnto him, & if he will auow vnto ẏ diſ ſeiſour, then vpõ the matter ſhewed, ẏ auow rye ſhalbe abated, for the diſſeiſi is tenant to them in right & in lawe.

¶ Alſo if land be geeuen to a man in ẏ taile reſeruing vnto the donour & his heires a cer tain rent, if the donee bee diſſeiſed, & after the donour releaſeth to the donee al ẏ right that he hath in the land, & after the donee entreth into the land vpon the diſſeiſour, in this caſe the rent is gone, for this that the diſſeiſi at ẏ time of the releaſe made was tenãt in ryght and in lawe vnto the donour, & the auow= rye of fine force ought to be made vpon hym by the donour for the rent behynd &c.

But yet nothing of the right of the land, ẏ is no lay of the reuerſion, ſhal paſſe by ſuche re=

 ieaſe

leaſe for this that the donee to whom the
leaſe was made then had nothinge in the lād
but onely a right, & ſo the righte, of the lād
may not paſſe by ſuch releaſe of the donee. In
the ſame maner it is if a leaſe be made to one
for terme of life, reſeruing to the leſſoure and
to his heirs certeine rēt, if the leſſee be diſſeiſed
and after the leſſour releaſeth to the leſſee
and to his heires, & after the leſſee entreth
how beit that in the caſe ꝑ rent is extinct, yet
nothing of ꝑ right paſſeth &c. cauſa qua ſupra
But if it be verye lord and verye tenaunt, &
the tenaunt maketh a feoffemente in fee, the
which feoffee neuer became tenāt to the lorde
&c. if the Lorde releaſe to the feoffour all his
righte &c. that releaſe is voide, for thys that
the feoffour hath no right in the lande, & hee
is no tenant in right to the lord but onely te-
nant as for the auowry to be made, & he ſhall
neuer compel the lord to auow vpō him, for
ꝑ lorde may auow vpon him the feoffee if he
will. Otherwiſe it is where ꝑ very tenāt is
diſſeiſed as in caſe aforeſaid, for if the very te-
naunt that is diſſeiſed holdeth of the lorde by
knightes ſeruice & dieth his heirs beīge with-
age, the lorde ſhal haue & ſeiſe the warde of ꝑ
heire. And ſo he ſhal not haue the warde of ꝑ
feoffour that made ꝑ feoffement in fee, & ſo
is a great deuerſitie betwen theſe two caſes.

¶ Alſo if a manne enfeoffe another in hys
lande vpon truſte, and to the entent that he
ſhal perfourme his laſte will, & the feoffee

occuppeth the ſame at ꝯ will of his feoffees, and after the feoffees releaſe by their deed vn to the feoffour all the right ꝛc. This hath ben in queſtion if ſuch releaſe be good or not, and ſome haue ſaide that ſuche releaſe is good for this, that no priuitye was betwene the feoffees & theire feoffour in ſo much that no leaſe was made after ſuch feoffemt by the feoffees to ther feoffour to hold at there will ꝛc. and ſome haue ſaid the cõtrary, & ꝯ for two cauſes. One is, that when ſuch feoffemẽtz made vpon confidence to perfourme the will of the feoffour, that it ſhalbe vnderſtãd by the law ꝯ the feoffour by & by, oughte to occupy ꝯ lãd at the will of his feoffees, & ſo it is ſuch mañ of priuitye betwene them, as if a man make a feoffemt to another perſõ & thei incõtinẽt vpõ the feoffement will ſaye & graunt that ꝯ feoffour ſhal occupy the land at their will ꝛc. an other cauſe they alledge, that if ſuch land bee worth xl.s by yere ꝛc. Then ſuch a feoffour ſhalbe ſworne in aſſiſes & in other inqueſtes in pleas reals and alſo in pleas perſonels, of what great ſommes ſoeuer that the pleintyef will declare ꝛc. And this is by the cõmõ law of the land. Ergo this is for a great cauſe, and the cauſe is that the law will that ſuche feoffour and theire heires ought to occuppe ꝛc. And to take therof the rent and al the profytes, and all maner of iſſues and reuennes ꝛc. as though the tenementes were theire owne

without interruption of feoffees, notwithſtanding ſuch feoffements. Ergo the ſame laſwe geueth a priuity betwen ſuch feoffors, & their feoffees vpon cõfidẽce &c. For which cauſes they haue ſaid that the releaſe made by ſuch feoffees vpon confidẽce to the feoffor, or to his heirs &c. ſo occupying the land &c. ſhalbe good ynoughe &c. And this is the better opinion, as it ſeemeth. Alſo releaſes after ỹ matter in dede ſometime haue their effect by force to enlarge the eſtate of thẽ, to whõ the releaſe is made, as if I let certein lãd to a man for terme of yeares, by force whereof he is poſſeſſed, & I releaſe vnto hym al ỹ right that I haue in the land without more wordes ſet or put in the deede, and deliuer vnto him the deed. Then hee hath eſtate but for terme of hys life, and the cauſe is for this, that when the reuerſion or the remainder is in a man the which will enlarge by his releaſe ỹ eſtate of the tenãt &c. he ſhall haue no greater eſtate but in the maner & fourme, as if ſuch a leſſor were ſeiſed in fee, and will by his deed make eſtate to one in a certain fourme &c. and deliuer vnto him ſeiſin by force of the ſame deed if in ſuche deede of feoffement there bee no worde of inheritance &c. Then he hath eſtate but for terme of life &c. & ſo it is in ſuch releaſe made by hym in the reuerſion, or in the remainder, for if I let lande to a man for terme of life, & after I releaſe vnto him all my right without more ſayinge in the releaſe

leaſe, his eſtate is not enlarged. But if I re-
leaſe vnto him & to his heires of his body en-
gendred, then he hath fee taile, & if I releaſe
vnto him & to his heirs, then he hath fee ſim
ple. So it behoueth in ſuch caſe to ſpecifye in
ẏ deed, what eſtate he to whom the releaſe
is made ſhal haue &c. And ſometime releaſe
ſhal enure to ſet & put the right of him ẏ ma
keth the releaſe to him to whom ẏ releaſe is
made. As a man is diſſeiſed & he releaſeth vn
to ẏ diſſeiſor al the right ẏ he hath. In thys
caſe the diſſeiſor hath his right ſo ẏ wher his
eſtate before was wrong, now by the releaſe
it is lawful & right, but note well ẏ when a
man is ſeiſed in fee ſimple of any lāds or te-
nemēts, & another will releaſe vnto him al ẏ
right that he hath in the ſame tenementes it
needeth not to ſpeke of the heires of him to
whō the releaſe is made, for this that he had
fee ſimple at the time of the releaſe made, for
if the releaſe were made to him and to hys
heires for one day or for one howr, this ſhal
be as ſtronge vnto him in the law, as he had
releaſed to him and to his heires, for whē his
right was gone from him at one time by his
releaſe without any condicoin &c, to him that
had fee ſimple it is gone for euer. But where
a man hath a reuerſion, or a remainder in fee
ſimple at the time of the releaſe made, there
if hee will releaſe to the tenaunt for terme
of yeares or for yearme of lyfe, or in the
tayle, it behoueth to determyne the eſtate

that he to whō the releaſe is made ſhal haue by force of the ſame releaſe. For this ꝑ ſuch releaſe goeth to ēlarg ꝑ eſtate &c. of him to whō ꝑ releaſe is made. But otherwiſe it is wher a man hath but a right vnto the land & hath nothing in the reuerſion nor in the remainder in deed. For if ſuch a man releaſe al his right to one ꝑ is tenant of the franktenemēt al hys right is gone, though that no mencīō be made of his heires of him to whō ꝑ releaſe is made For if I let land to a man for terme of life, if I after releaſe vnto him for to enlarge hys eſtate yet it behoueth ꝑ I releaſe vnto him & to his heirs of his body engendred, or to him & to his heires males of his body begotten or by ſuch ſemblable eſtate &c. or otherwiſe hee hath no greater eſtate thā he had before. But if my tenant for terme of life let the ſame land out to another for terme of ꝑ life of his leſſee ꝑ remainder vnto another in fee, now if I releaſe vnto him to whom my tenant letted for term of life. I ſhalbe barred for euer though ꝑ no mencion be made of his heires, for thys that at the time of the releaſe made I had no reuerſion but onely a right to haue the reuerſion. For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcōtinued & ſuch a releaſe ſhal enure vnto him in the remainder to haue aduāntage of this as well as to the tenant for terme of lyfe, for to that intent the tenaunt for terme of life & he in the remainder bee as one

tenant

tenant in the law, & be as if one tenant were ſole ſeiſed in his demeane as of fee at the time of ſuch releas made vnto him. Alſo if a man be diſſeiſed by twoe, if he releaſe vnto one of them he ſhal hold his fellow out of the lād & by ſuch releaſe ſhal haue ſole poſſeſſion, and eſtate in ẏ land. But if one diſſeiſour enfeoffe two in fee & the diſſeiſi releaſe to one of them this ſhal enure to both ẏ ſaid feoffees And ẏ cauſe of ẏ diuerſiti betwen theſe two caſes is repugnant ynough.

¶ Alſo if I. be diſſeiſed, & the diſſeiſor is diſſeiſed if I. releaſe to the diſſeiſor of my diſſeiſor. I ſhal neuer haue aſſiſe nor entre vppon his diſſeiſour, for this that his diſſeiſour hath my right by my releaſe &c. & ſo it ſemethe in this caſe that if ther were twenty diſſeiſours eche after other, and I. releaſe to the laſt diſſeiſor he ſhal barre al the other of their acciōs and their titles. And the cauſe is as it ſemeth for this ẏ in many caſes when a mā hathe a lawful title to enter though he enter not &c. he ſhal defete al mean titles by his releas &c. But this is not in euery caſe as ſhalbe ſaid afterward.

¶ Alſo if a man be diſſeiſed the which hath a ſonne yn age & dieth & being the ſonne yn age the diſſeiſor dieth ſeiſed, & the land diſcendeth to the heire & a ſtranger abatethe and after the ſonne of the diſſeiſi when he cōmeth vnto full age releaſeth all his righte &c. to ẏ abatour, In this caſe the heire of the diſſey-

for ſhal haue no aſſiſe of mortdãceſter againſt the abatour but he ſhalbe barred of the aſſiſe for this that the abatour hath the right of ỹ ſonne of the diſſeiſy by his releaſe, & the ẽtre of the ſõne was lawful &c. for this ỹ he was within age at the time of ỹ diſcent &c. but yf a man be diſſeiſed & the diſſeiſour maketh a feoffemẽt vpõ a condicion ỹ is to ſay to yelde vnto him certaine rent and for t he default of payment a reentry & c. if the diſſeiſy releaſe to ỹ feoffee vpon condicion yet this altereth not ỹ eſtate of ỹ feoffee vpon condiciõ as it was before. In the ſame maner it is wher a man is diſſeiſed of certain land and the diſſeiſoure graunteth a rent charg out of the ſame lãde though that after the diſſeiſye releaſeth vnto the diſſeiſour. &c. yet the rent charge abydethe in his force. And the cauſe is in theſe two caſes ỹ a mã ſhal haue nõe aduantage by ſuch releaſe that ſhalbe againſt his owne proper acceptãce & a gaiſt his own grãt. And though ỹ ſome haue ſaid that wher the entre of a mã is congeable vppon a tenãt if hee releaſe to the ſame tenant that this auayleth vnto the tenaunt ſo as if he had entred vpon the tenãt and after enfeoffed him &c. this is not true in euery caſe for in the. firſt caſe of theſe twoe caſes if the diſſeiſy in fee enter vpon ỹ feoffee vpon condiciõ and after enfeoffethe him, thẽ the condicion is al put aſide and voide. And in the ſeconde caſe if the diſſeiſie enter & enfeoffe him that graunted the rent charg then

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is ỹ rent charg auoided. but it is not auoided by any ſuch releas ẅ an ẽtre made. ꝛc. Alſo if a mã be diſſeiſed & his child ẅin age ỹ which alieneth in fee, & ỹ alien dieth ſeiſed, & his heir entreth being the diſſeiſour ẅin age: Now it is in the electiõ of ỹ diſſeiſour to haue a ẅrit of Dũ fuit infra etatẽ, or a ẅrite of right againſt ỹ heir of ỹ alienẽ, & which ẅrit ſo euer he taketh of them. he ought to recouer by ỹ law And alſo he may enter into ỹ land ẅout any recouery & in this caſe ỹ entry of the diſſeiſy is taken away. but in this caſe if the diſſeiſye releaſe his right to the heire of the alien and after the diſſeiſour bringeth a ẅrite of right againſt the heire of the alyene & hee ioyneth the miſe vpon the cleare right ꝛc. the Graũde aſſiſe ought by the law to find that ỹ tenant hath more clere right ꝛc. then hathe the diſſeiſour, for this that the tenant hath ỹ righte of the diſſeiſy & his releaſe ẅhich is more aũcient and more clere right than the right of ỹ diſſeiſour, for by ſuch releaſe all the right of ỹ diſſeiſy paſſeth vnto ỹ tenant, & in the tenant And to this ſoe haue ſaid ỹ in ſuch caſe ẅher a man hath right to lãds or teneñts but hys entry is not lawful if he releaſe vnto ỹtenãt ꝛc. Thẽ ſuch releaſe ſhal enure by ẅay of extinguiſhment. As vnto this it may be ſaid, ỹ this is truthe vnto him that releaſeth, for by his releaſe hee hath diſmiſſed himſelfe clene of his right as to his perſõ. but yet ỹ right ỹ he had may ẅel paſſe & go vnto ỹ teñt by his

releaſe, for it ſhould be incōueniēt that ſuche an aūcient right ſhould be extinct al vtterly &c. for it is cōmonly laid ẏ right may not die. But a releaſe ẏ goeth by ẏ way of extinguiſhment againſt al perſons, is where he to whō ẏ releaſe is made may not haue this ẏ vnto him is releaſed. As if there be lord & tenāt, & the lord releaſeth vnto ẏ tenāt al ẏ right ẏ he hath in the lordſhip, or al the righte ẏ he hath in ẏ land &c, ſuch a releaſe goeth by way of extinguiſhement againſt al perſons, for this, ẏ the tenant may not haue the ſame of himſelfe in the ſāe maner is a releaſe made to ẏ tenāt of the lād of a rēt charge, or of a common paſture for this that the tenant may not haue ẏ ẏ vnto him is releaſed &c. So ſuch releaſes go away by extinguiſhment againſt al perſones.

¶ Alſo, to proue ẏ the graūd aſſiſe ought to paſſe for the demaundant in the caſe aforeſaid I haue heard often in the lecture vpō the ſtatute of weſtm̄ the ſecond that begynneth In caſu quando vir amiſerit per defaltam tenemētū quod fuit ius vxoris ſue &c., ẏ is at the cōmon law before the ſtatute, if a leaſe were made to a tenant for terme of life, the remainder ouer in fee, & a ſtrōger by a fained acciō recouer againſt the tenāt for terme of lyfe by default, & after the tenāt dieth he in ẏ remainder had no remedy before the ſtatute, for this ẏ he had no poſſeſſiō of the lād but if hee in the remainder had entred vpō the tenant for terme of life, and diſſeiſed him, and after the

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tenant entreth vpon him, & after the tenaunt for terme of life leaſeth by ſuch recouery had by defaut and dieth, now he in the remainder may well haue a writ of right againſt him ỹ recouered, for this that ỹ miſe ſhalbe ioyned onely vpon the clere right. And yet in thys caſe the ſeiſin of him in the remainder was defeted by the entre of ỹ tenāt for terme of life. But peraduēture ſōe will argue & ſay ỹ hee ſhal haue no writ of right in this caſe, for this ỹ whan ỹ miſeis ioyned in ſuche maner, that is to ſay, if the tenaunt haue more clere right to ỹ land in ỹ maner as it is holdē thē the demaundant hath in the maner as he demaundeth. And for this ỹ the ſeiſin of ỹ demāndant was defeated by the entre of the tenant for terme of life, then he hath no right in the maner as he demaundeth. Unto this it may be ſaid that theſe wordes (Mode & forma prout &c. in many caſes be wordes of maner of pleadig. And no wordes of ſubſtance. For if a man bring a writ of entre (In caſu prouiſo) of alienacion made by ỹ tenāt in dower to his diſenheritance, & pledeth of the alienatiō made in fee, & ỹ tenant ſaieth ỹ he aliened not in the maner as the demaūdaunt hath declared, and vpon this they bee at iſſue, & it is found by verdict that the tenāt aliened in the taile, or for terme of anothers life the demaūdaunt ſhal recouer, & yet ỹ alienaciō was not in the maner as the demaūdāt hath declared. Alſo if ther be Lord and tenant, and the

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tenant holdeth of the lord by fealtie onely, & the lord diſtraineth the tenãt for rent & ỹ tenãt bringeth a writ of treſpas againſt his lord for his cattaile ſo takẽ & the lord pleadeth ỹ ỹ tenant holdeth of him by fealtie & certein rẽt & for the rent behind he came to diſtrain &c. & demaundeth iudgement of the writ brought againſt him. Quare vi & armis &c. And the other ſaieth ỹ he holdeth not of him in ỹ maner as he ſuppoſeth & vpon this they be now at iſſu it is found by verdict ỹ he holdeth of hym by fealtie tantũ in this caſe the writ ſhall abate, and yet he helde not of the lord in ỹ maner as the lord had ſaid for the matter of the iſſue is, whether the tenãt holdeth of him or not. For if he hold of him, though the lord diſtrain for other ſeruices that hee ought not to haue, yet ſuch writ of trũs Quãt vi & armis &c. lyeth not againſt the lord but ſhal abate.

¶ Alſo in a writ of treſpas of beatinge or of goods taken, if the defendant pleade nothing culpable in the manner as the plaintife ſuppoſeth, and it is found that the defendant is culpable in another town, or at another day thã the plaintife ſuppoſeth, yet he ſhal recouer, & in manye mo other caſes theſe words, that is to ſay in the maner as the demaundãt or ỹ plaintife hath ſuppoſed bee no matter of ſubſtance of the iſſu, for in a writ of right when the iſſe is ioyned vpon the cleere right it is as much to ſay & to ſuch effect, ỹ is to wete, whether hath the more righte the tenaunt or

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the demaundāt to the thing ſo demaunded ꝛc.
¶ Alſo if a man be diſſeiſed ꝛ the diſſeyſoure dieth ſeiſed ꝛc. ꝛ his ſonne entrethe by dyſcent, and the diſſeiſie entreth vppon the heire of the diſſeiſour, the whith entre is a diſſeiſie ꝛc. if the heir bring ā aſſiſe of a writ of right againſt ẏ diſſeiſye he ſhalbe barred. For this that when the graund aſſiſe is ſworne their othe is vpon the clere right and not vppon ẏ poſſeſſion ꝛc, for if the heire of the diſſeiſour had brought aſſiſe of nouel diſſeiſin or a writ of entre in nature of aſſiſe ꝛ recouered againſt the diſſeiſy ꝛ ſued execution, yet may the diſſeiſi haue a writ of ētre in the per. againſt him of the diſſeiſin made vnto him by his father or he may haue againſt the heire a writ of right. But if the heire ought to recouer againſte the diſſeiſy in the caſe aforeſaide by writ of righte, then al his righte ſhalbe clerely gone for this ẏ a final iudgement ſhould be geuen againſt him which ſhould be againſt reaſon wher the diſſeiſy hath more clere right ꝛc. ꝛ know ye my ſōne that in a writ of right after this that ẏ fower knightes be choſē in ẏ grād aſſiſe, then ther is no greter delay thē a writ of formedon after this ẏ the parties be at an iſſue ꝛc. ꝛ if the aſſiſe be ioyned vpon battaile then ther is leſſe delaye.
¶ Alſo a releaſe of al the right ꝛc. in ſōe caſe is good made vnto hym that is ſuppoſed tenaunt in the law, though he haue nothinge in the tenements, as in a Præcipe quod reddat,

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if the tenant alien the land hanging ꝑ writ & after the demaundant releaſeth to him all his right the releaſe is good, for this ꝑ he is ſuppoſed to be tenāt by ꝑ ſuite of ꝑ demaūdāt, & yet he hath nothing in the land at the time of the releaſe made. In the ſame maner it is if in a Precipe quod reddat, the tenant vouch, & the vouch enter into the garranty, if after ꝑ demaundant releaſe to ꝑ vouch al his right &c. this is good inough, for this ꝑ ꝑ vouche after this that he hath entred in the garranty is tenant in law to ꝑ demandant.

¶ Alſo as to releaſez of accions reals and accions perſonels it is ſo that ſome accions mixte in the realtie & in the perſonalty, as if an action of waſt be ſued againſt the tenante for terme of lyfe, this action is in the realty for this that the place waſted ſhalbe recouēd And alſo it is in the perſonalty for this that ꝑ treble damage ſhalbe recouered for ꝑ wrōg & waſt done by ꝑ tenāt, & for this in this action a releaz of accīō real is a good ple in barre & ſo is a releaſe of accions perſonels. In the ſāe maner it is in aſſiſe of nouel diſſeiſin, for this that it is mixt in the realty & in ꝑ perſonaltie. But if ſuch aſſiſe be arrained againſt ꝑ diſſeiſour ꝑ tenant of ꝑ diſſeiſor maye pleade a releaſe of actions perſonals for to barre ꝑ aſſiſe but not releaſe of actions reals, for nōe ſhal pled a releaſe of actiōs realz in aſſiſe, but the tenants &c.

¶ Alſo in ſuch actions that behoueth to be

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lued againſt the tenant of the frankteneme̅t. if the tenant haue a releaſe of accions reals of the demaundāt made vnto him before the writte purchaſed & he pleadeth it this is a good plee for the demaūdant to ſay, that he ỹ pleadeth ỹ plee, had nothig in the frāktenemente in time of a releaſe made, for that he had no cauſe to haue accion real againſt him.

¶Alſo in ſuch caſe where a man may enter into lāds or tenemēts, he may haue of thys an accion real, which is geuē vnto him by ỹ law againſt the tenant. As in this caſe the demaundant releas to the tenant al maner accions reals, yet this taketh not away ỹ entre of the demaundant but the demandant may wel enter. Notwithſtanding ſuch releas, for this that nothing is releaſed but the acciō &c In the ſame maner it is of things perſonalz As if a man wrōgfully, take my goods, if I releaſe vnto him all accions perſonels, yet I may by the law take my goodes oute of hys poſſeſſion.

¶Alſo if I haue cauſe to haue a writte of det tre of my goods againſt another though ỹ I releaſe vnto him for al accionz pſonels, yet I may take my goods out of his poſſeſſion, for this that no right of goods is releaſed to him but onely ỹ accion &c. Alſo if a man be diſſeiſed, and the diſſeiſoure maketh a feoffement vnto diuers perſons to his vſe, and the diſſeiſour contynually taketh the profyts &c. and the diſſeiſye releaſeth vnto him al acciōs

reals

releaſe, and after he ſuethe againſt him a writ of entre in nature of aſſiſe, becauſe of ꝯ ſtatute for this that he taketh the profytes. Enquire how the diſſeiſour ſhalbe holpen by the ſaid releaſe for if he will plede the releaſe generally, then the demaundant may ſay ꝯ he had nothing in the frankteneмēt at the time of the releaſe made, and if he plede the releas ſpecially thē it behoueth him to know a diſſeiſin, and then may the demādant enter in ꝯ land ꝛc. by his conuſaunce of the diſſeiſin ꝛc. But paduenture by eſpecial pleding he may be barred of the accion ꝯ he ſueth ꝛc. though ꝯ the demaundant may enter ꝛc.

¶ Alſo if a man ſue appelle of felony of the death of his aunceſter againſt another though the appellant releaſe vnto ꝯ defendāt al maner accions reals & perſonels, this ſhall not help the defēdāt, for this ꝯ this appele is not an accion real, in ſo much ꝯ the appellāt ſhall not recouer any realtie, nor ſuch appele is no acciō perſonel in ſo much ꝯ the wronge was vnto his aunceſter and not vnto him, but if he releaſe to the defendant al maner of acciōs then it ſhalbe a good barre in appelle, & ſo a man may ſee ꝯ a releaſe of al manor of accions is better then a releaſe of al maner of accions reals & perſonals ꝛc.

¶ Alſo in appele of robbery if the defēdāt will plede a releaſe of the appellant of al accions perſonels, this ſeemeth no ple, for an action of appele where the appellant ſhal haue

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iudgment of death &c. it is more hygh thē an accion perſonall, and it is not properly ſaide an acciō perſonal, & therfore if the defendant will haue a releaſe of the appellaunt to barre him of the appele, it behoueth him to haue a releaſe of al maner of accions of appele of releaſe or of all maner of actions as it ſeemeth &c. But in appele of mahym a releaſe of all maner of acciō pſonals is a good plee in barr for this that in ſuch an accion he ſhal recoū but damages.

Allo if a man be outlawed in an acciō perſonall by proceſſe of the original, and bringe writ of errour, if he at whoſe ſuite he was outlawed wil plede againſt him a releaſe of actions pſonelz, this ſeemeth no plee, for by ỹ ſaid accion he ſhal recouer nothing in ỹ pſonaltie, but al onely to reuerſe ỹ outlary, but a releaſe in a writ of error ſhalbe a good plee &c.

Allo, if a man recouer debt or dammage, & he releaſe to the defendant al maner of acciōs yet he may lawfully ſue execucion by Capias ad ſatisfaciendum, or by Elegit, or by Fieri facias, for execucion by ſuch writte may not be ſaide an accion, but if after a yere & a day the pleintife will ſue a Scire facias to haue execucion &c. thā it ſeemeth a releas of al acciōs ſhalbe a good plee in barre, but ſōe haue thought the contrary, in ſo much ỹ the writte of Scire facias is a writ of execuciō, & is to haue execucion. But in ſo much that vppō ỹ ſame writ ỹ defendant may pled diuers matters

ters after the iudgemt geuen to putt him frō execution as outlawry & diuers other &c, ther for it may well be ſaid acciō &c. & I trowe ꝑ in a Scire facias oute of a fine & releaſe of al manner of acciōs is a good plee in barre, but where a man hath recouered debt or dāmage & it is accorded betwen thē ꝑ the plemtif ſhal be put out frō acciō, than it behoueth ꝑ ꝑ plemtiefe make a releaſe to him of al maner acciōs

¶ Alſo, if a man releaſe to another all maner demaundes, this is the moſt beſt releas ꝑ he to whō ꝑ releaz is made can haue, & moſt ſhal enure to his aduantage, for by ſuch releas of al maner of demaunds all maner of accions reals, perſonels, & acciōs of appeles be gone & extinct. & al maner of execuciōs bee gone & extinct. And if a man haue title to ēter in any landes or tenements by ſuch releaſe, his tit is gone. And if a mā haue rent ſeruice or rēt charge or common of paſture &c. by ſuch releas al maner demaundes to the tenant of the land, wher of the ſeruice or ꝑ rente is going out, or in what land ſoeuer the common bee the ſeruice and rent, & the common is gone & extincte &c.

¶ Alſo if a man releas to another all maner quarels, or all controuerſies or debates betwene them. Enquire to what matter, and to what effect ſuch woordes extende.

¶ Alſo, if a man be bound by his deed to another in a certein ſūme of mony to pay at ꝑ feaſt of S. M. then next folowing &c if ꝑ obligge

tiege before the ſaid feaſt releaſe to ꝯ obligor
al accions, he ſhalbe barred of ꝯ dutie for ẽ
& yet he might haue no accion at the time of
the releaſe made. But if a man let lande to
another for terme of yeres to yelde at ꝯ feaſt
of ſaint Michael next enſuing xl. ſhillings, &
before the ſame feaſte he releaſeth to ꝯ leſſee
al accions, yet after the ſãe feaſt he ſhal haue
an accion of Debt for the non paiment of the
xl. ſhillings notwithſtanding ꝯ ſaide releaſe.
Studie the cauſe of the diuerſitye betwene
theſe two caſes.

¶ Alſo, where a man wil ſue a writ of right
it behoueth ꝯ he plede of diſſeiſin of hĩ or of
his anceſters, & alſo ꝯ the ſeiſin was in time
of ꝯ ſãe lig as he pleadeth in his plee for this
is an auncient law vſed as it appeareth by re
port of a certain plee, in ſuch forme as ẽſueth.
Sir Jhon Warrey brought a writ of right
againſt Rainald Aſhington, & demãded cer
tain tenements &c. ꝯ meſe was ioined in the
bank, & the originall & the proceſſe were ſent
before Juſtices errantes, wher the parties
came & ꝯ xii. knights were ſworn wout chal
lenge, of the parties to be allowed for this ꝯ
the electiõ was made by aſſẽt of the parties
with the foure knightes, and the othe was
ſuch ꝯ J. ſhal ſay trouth &c. whether R. of A
haue more right to hold the tenements that
Jhon Warry demaũdeth againſt him by his
writ of right, or Jhon to haue the tenemẽtes
as he demaundeth & for nothinge to lette to

say the trouth as god me helpe &c. without saying to their knowledge, & such othe shall be made in attaint, & in battel, & in waginge of law, for those do euery thing vnto an end. But J. Barrey pleded of ẏ disseisin of one Rafe his aūcester in time of king Henrye & Rainold vpō ẏ mise ioined, tendered halfe a marke for ẏ time &c. & vpō this Herle Justice said to ẏ graund assise, after ẏ they were charged vpō ẏ clere right, good men, Raynold gaue halfe a mark to ẏ king for ẏ tyme to ẏ intent ẏ if ye find ẏ the aūcester of Jhō was not seised in time ẏ the demādant hath pleded, you shal enquire no further vpon the right, & for this yee shal say to vs whether ẏ aūcester of Jhon Rafe by name was seised in ẏ time of king Henry as hee hath pleaded or not, & if ye find ẏ he was not seised in the time yee shal enquire no more, & if yee fynde ẏ hee was seised, then enquire farther of ẏ right, & after ẏ graūd assise came & their verdict & said ẏ Rafe was not seised in ẏ tyme of king Henry, whereby it was awarded ẏ Reynold should hold ẏ tenemēts against him demaūded to him & to his heirs quite of J. Barrey & his heires to the remenāt, & Jhō in the mercye.

Confirmacion. Cap. ix.

A Deede of confirmaciō is most commōly in such forme or to such effect. Nouerint vniuersi &c. me A. B. ratificasse, approbasse & cōfirmasse C. de D. statū & possessiō quos

habeo

habeo de & in vno meſuagio &c. cli pertinen in M. & in ſome caſe a dede of cõfirmaciõ is good & vailable wher in the ſame caſe a deed of releaſe is not good nor vailable. As J. let lãd to a mã for term of his life, ẏ which letteth ẏ ſame land to another for xl. yeres, by force of the which he is poſſeſſed, if J. by my deed cõfirme ẏ eſtate of the tenant for term of yeres & ẏ tenant for term of life dieth during the term of yeres, J. may not enter in ẏ land during the ſame terme, yet if J. by my deed of releaſe haue releaſed to ẏ tenaunt for terme of yeres in ẏ life of ẏ tenãt for terme of life, ẏ releaſe ſhalbe void, for this ẏ then no priuity was betwene me & ẏ tenãt for term of yeres, for a releaſe is not auailable to the tenant for terme of yeres, but wher a priuitie is betwene him & him ẏ releaſeth, In ẏ ſame maner it is if J. be diſſeiſed & ẏ diſſeiſor maketh a releaſe to another for term of yers, if J. releaſe vnto ẏ termor ẏ is void, but if J. cõfirme ẏ eſtate of ẏ termor ẏ is good & effectuel. Alſo if J be diſſeiſed & J cõfirme ẏ ſtate of ẏ diſſeiſour then he hath a good and tightful eſtate in fee ſimple though ẏ i ẏ deed of cõfirmaciõ no mẽciõ is mave of his heirez for this ẏ he had fee ſimple at the time of the confirmaciõ, for in ſuch caſe if the diſſeiſi cõfirme ẏ ſtate of ẏ diſſeiſor to haue & to hold to hi for term of his life, yet ẏ diſſeiſor hath fee ſipl' & is ſeiſed i his demeſn as of fee for thiz ẏ whẽ his ſtate was confirmed he had fee ſiple & i ſuch deed he may not chãge his ſtat Bout

vpō him &c. in ꝯ ſame maner it is if ꝯ eſtate be confirmed for terme of a day, or for terme of an hower, he hath a good eſtate in fee ſimple, for ꝯ ꝯ his eſtate in fee ſimple was once cōfirmed for confirmare idē eſt qō firmū facere. Alſo if two be diſſeiſoures & the diſſeyſee releaſeth to the one, he ſhal hold his felow out of the lande, but if the diſſeiſye confirme the eſtate of ꝯ one without more ſpech in ꝯ deed ſōe ſay ꝯ he ſhal not hold his felow out but he ſhal hold iointly wᵗ him, for this ꝯ nothing was cōfirmed but this eſtate ꝯ was ioint, & for this ſōe haue ſaid ꝯ if ij. iointenāts be, & ꝯ one cōfirmeth ꝯ eſtate of the other, that he hath but a ioint eſtate as he had before, but if he haue ſuch wordes in the deed of confirmaciō, to haue & to hold to him & to his heirs al ꝯ teneñts. wherof menciō is made in the cōfirmaciō, thē he hath eſtate ſole in ꝯ teneñts, & therefore it is a good & ſuer thing in eūy cōfirmaciō to haue theſe wordes to haue & to hold ꝯ teneñts &c. in fee or in fee taile or for term of life. or for terme of yerꝫ, after as ꝯ cauſe or ꝯ matter is, for to ꝯ intēt of ſome, if a mā let lād to another for term of life & after he cōfirmeth his eſtate by theſe wordes to haue & to hold his eſtate to him & to his heires, this cōfirmaciō as cōcerning his heirs is void, for his heirs cannot haue his eſtate which was but for term of life, but if he confirme his eſtate by theſe wordes to haue ꝯ ſāe lād to him & to his heirs, this cōfirmaciō maketh fee ſimple in this caſe to him in ꝯ lande

for this

this ỹ this wordz to haue & to hold &c. goeth in ỹ land & not to ỹ estate ỹ he hath &c. Also if I let certain lād to a womā sole for terme of her life ỹ which taketh a husband, & after I cōfirme ỹ estate to ỹ husbād & to the wife for terme of their two lines, in this case the husbād holdeth not iointly wt ỹ wife, but holdeth ỹ right of his wife for terme of his life, but this cōfirmaciō shal ēure to ỹ husbād by way of remainder for terme of his life, if hee suruiue his wife, but if I let lād to a womā sole for terme of yeres, which taketh a husbād, & after I cōfirme ỹ state to the husbād & ỹ wife, for terme of both their lines, ī this case they haue ioint estate in ỹ frāktenemēt of ỹ lād for this, ỹ the wife had no frāktenemēt before. Also if a parsō of a church charge ỹ glebe of his church by his deede, & ỹ patrō & ỹ ordinary cōfirme the same graūte, & al ỹ is cōprised wtin ỹ same grāt. thē ỹ sāe graūt shalbe in his strēgth after ỹ purpose of ỹ sāe grāt, but in such case it behoueth ỹ the patrō haue fee simple in the auowsō, for if he haue estate in the auowson for terme of life or in taile, thē the graūt shal stād but during his life, & the life of the parsō that grāted it &c. Also if a man let lād for terme of life, which tenant for terme of life chargeth the lād with arent in fee, & hee in ỹ reuersiō cōfirmeth ỹ same graūt, this charge is good inough & effectual. also if ther be a ppetual chātry wher of the ordinary hath nothing to meddle nor to do, the patron of the chaūtry, & the chap-

laine of ỹ same chauntry may charge ỹ chaū try with a rēt cherge in perpetuitye. Also in some case these verbs, dedi & cōcessi, haue ỹ same effect in substaunce, & shal enure to the same entent as this verb cōfirmaui, as if I be disseised of a plough land & after I make such a deede &c. Sciant p̄sētes &c. quod dedi to the disseisour the said plough land &c. And if I deliuer al onely ỹ deede to him wout liuery of seisin of the land, ỹ is good confirmacion, and as strong in the lawe, as if he had in the deede this verbe confirmaui &c.

Also I let land to a man for terme of yeres, by force of which he is possessed, and after I make to him a deed &c. Quod dedi vel cōcessi &c. the same land to haue for term of his life, and deliuer him his deede, then by and by he hath estate in the land for terme of his life, & if I lay in the deede to haue to him & to his heires of his body engendred hee hath estate in the taile, and if I lay in the deede to haue and to hold to him & to his heires, hee hath estate in fee simple, for this shal enure to him by force of confirmacio to elarge his estate.

Also if a man bee dissepsed, and the dissepsour dyeth seised, and his heirez be in by discent, after the disseisy, & the heir of the disseisour make ioyntly a deede to another in fee, and liuerye of seisin vppon this is made, as to the heire of the disseisour that ensealeth ỹ deede, the tenementes passe by ỹ same deede by waye of feoffement, and as to the disseisy ỹ ensealeth the same deede, this shal not enure

ture by the way of confirmacion, but if the dis
seisi in this case bring a writ of Entre in the
(Per & Cui) against the alien of ỹ heir of ỹ
disseisor enquire how hee shal pleade ỹ deede
against the defendāt by way of confirmacō
&c. And know ye this my childe, ỹ it is one
of the most honorable, lawdable, & profyta-
ble things in our law to haue ỹ sciēce of wel
pleading, in acciōs reals & personals, & for
this I counsail thee, specially to set thy cou-
rage & cure to learn ỹ. Also if there be lorde
and tenant, & the lorde confirmeth the estate
ỹ the tenāt hath in the tenementes, yet the
seignior wholy abideth to ỹ lord as it was
before. In the same maner it is, if a mā haue
a rent charge out of a certain lād. & hee con-
firme the state ỹ the tenant hath in the lād,
yet abideth to the cōfirmour the rēt charge.
In the same maner it is if a mā haue cōmon
of pasture in the land of any other, if he con-
firme the state of the tenāt of the lād nothing
shal depart from him of his cōmon, but this
notwithstanding the cōmon abideth to him
as it was before.

¶ But if there be lord & tenāt which hol-
deth of his lord by seruice of fealty and .xx.s.
of rent, if the lorde by his deede confirme the
estate of the tenāt to hold by .xij.d.i.ō. or by
an ob. in this case the tenāt is discharged of
all other seruices & shal yeld nothing to the
lorde but that ỹ is comprised wtin the same
cōfirmacion, yet if the lord will by the deede
of confirmacō, that the tenaunt in this case

ought to yeld to him an hawk or a rose yerely at such a feast &c. this reseruacio is void, for this ỹ he reserueth to him a new thing ỹ neuer was parcel of the seruices before ỹ cõfirmacio, & so the lord may abridge the seruices by such cõfirmacion, but he may not reserue to him a new seruice &c.

¶ Also if there be lord mesne & tenãt, & the tenant is an abbot ỹ holdeth of ỹ mesne by certein seruices yerely, the which hath no cause to haue acqtãce agaĩst his mesne for to brig a writ of mesne &c. In this case if ỹ mesne cõfirme ỹ state ỹ the abbot hath in the land to haue & to hold the lãd vnto him & his successors in frãkalmoigñ or free almes &c. In this case this cõfirmacion is good & thẽ the abbot holdeth of ỹ mesne in frãkalmoigne, & ỹ cause is for this, ỹ no new seruice is reserued, for al ỹ seruices specially specified, be extinct & nothing is reserued to the mesne, but ỹ abbot shal hold of the lãd, & ỹ was before the confirmacion, for he ỹ holdeth in frankalmoigne ought to do no bodely seruice so ỹ by such cõfirmacio it appeareth ỹ the mesne shal not reserue vnto hĩ no new seruice, but ỹ the lãds shalbe holdẽ of him as it was before, & i this case the abbot shal haue a writ of mesne if he be distrained in his default by force of ỹ said confirmacion where percase he might not haue such a writ before &c.

¶ Also if I be seised of a villain, as of a villein in grosse, & an other taketh hĩ out of my possessiõ claimig hĩ to be his villein, where as

hee

he hath no right to haue hī as his villei, & af
ter I cōfirme ꝯ estate to hī ꝯ he hath in my
villein, this cōfirmatiō semeth void, for this
ꝯ nōe may haue possessiō of a mā as of a vil-
lei i grosse, but he which hath right to haue
hī as his villein in grosse, & i so much ꝯ hee
to whō ꝯ cōfirmat was made, was not sei-
sed of him as of his villein at ꝯ time of ꝯ cō
firmatiō such cōfirmatiō is void, but in this
case if such woords were in ꝯ deede. Sciatis
me dedisse & cōfirmasse tali &c. talē villanū
meū, this is good, but this shal ēure by force
& way of grāt & not by way of cōfirmacion
&c. Also sometimes these verbes (dedi & con-
cessi) ēure by way of extinguishmēt of ꝯ thig
geuen or grāted. As a tenāt holdeth of his
lord by certein rēt, & ꝯ lord by his deede grā
teth to the tenāt & to his heires the rent &c.
this shal enure to ꝯ tenāt by the way of extin
guishmēt, for by this grāt the rent is extinct.
In this same maner it is where one hath a
rēt charge of certain lād, & he grāteth to the
tenāt of the lād the rent charge, & the cause is
for this ꝯ it apeareth by ꝯ woords of ꝯ grāt
that the will of the donour is, ꝯ the tenaūt
shal haue the rēt &c. in so muche ꝯ hee may
haue no rent out of his owne land, for thys
the deede shalbe vnderstād and takē for the
most aduantage and auaile of the tenaunt ꝯ
it may be takē, and for ꝯ it is by way of ex-
tinguishmēt. Also if I let lande to a man
terme of yeres, & after I confirme his estate
without moe woords put in ꝯ deede, he hath

no

no greater estate but for term of yeres as he had before, but if I release to him my right ꝑ I haue in the lande without mo woordes put in the deede, hee hath estate of frãktenement, & so maist thou my childe vnderstande great diuersities betwene releases and confirmacions. And if I bee within age and let land to one for terme of .xx. yeres, & he graũteth the land for terme of .x. yeres, so that hee grãteth but parcel of the term. In this case whẽ I am of full age if I release vnto the graũtee of my leale &c. this release is voide, for this ꝑ there is no ꝓfuity betweene him & mee. But if I cõfirme his estate, thẽ thys confirmacion is good, but if my lessee graũt al his estate to another, thẽ my release made to the grauntee is good & effectual. Also if a mã graũt a rẽt charge out of his land to an other for terme of his life, & after I cõfirme his estate in the said rent, to haue and to hold to him in fee taile or in fee simple, this confirmacion is void as to ꝑ enlarging of his estate for this, that he ꝑ cõfirmeth had no reuersion in the rent, but if a man seised in fee of rent service or of rent charge, & he graũteth the rent to another for terme of life, and the tenant attorneth, and after he confirmeth the estate of the grauntee in fee taile or in fee simple, this cõfirmaciõ is good as to ẽlarge his estate after ꝑ woords of the deede of cõfirmacion, for this, ꝑ hee that confirmed the estate at the time of the confirmacion, hadde the reuersion of the rent &c. But in this case

afore-

aforesaid, where a mā grāteth a rēt charge to another for terme of life, if hee will ꝯ the graūtee shal haue estate in the taile or in fee, him behoueth ꝯ the deede of the grauntee of the rent charge for terme of life, be reburrē-dred or cancelled, & then to make a new deed of such a rent charge to haue & to take to the grauntee in ꝯ taile or in fee. Ex paucis dictis intendere plurima possis.

¶ Attournement. Cap. x.

¶ Attournement is if there be lord & tenāt & the lord will graūte by his deede ꝯ seruice of his tenaūt to another for term of yeres, or for terme of life or in tail or in fee, him behoueth ꝯ the tenaūt attourne to the grauntee in ꝯ life of the graūtor by force and vertue of ꝯ graūt, or otherwise the graunt is void and attournemēt is none other thing in effect, but when ꝯ tenant hath hard of the graūt made by his lord, ꝯ the same tenant by woorde agree to ꝯ said graūt, as to say to the grātee, I agree me to the graūte made to you, or I am wel content of ꝯ graūt made to you &c. but ꝯ more common attournemēt is to say, sir I attorne to you by force of the same graūt or I becōe your tenāt &c. or to deliuer vnto the graūtee. i. ō. ob. or farthing, by way of attournement &c.

¶ Also if a mā bee seised of a manour which manor is parcel in demeine & ꝑcel in seruice if hee

if he wil alie in such maner to another, it behoueth ꝯ by force of the alienac al the tenats ꝯ holde of the alienor as of this manner &c. atturne to ꝯ alienor or otherwise the seruices abide continuallie in ꝯ alienor, except tenats at wil, for it needeth not the tenants at will atturne vpō such alienaciō &c. for this ꝯ the same lands or tenemts ꝯ they hold at wil do passe the aliene by force of suche alienacion.

¶ Also if there bee lord and tenaunt, & the tenaūt letteth the tenemts to a mā for term of life the remainder to another in fee, if the lord graūt the seruices to the tenāt for term of life i fee, in this case ꝯ tenāt for term of life hath fee in the seruices, but services be put i suspēce during his life, but his heires shall haue the seruices after his death, & in ꝯ cas it needeth not attournemēt, for by the acceptāce of the deede of him ꝯ ought to attorne, this is attornemēt in him selfe &c. but where the tenant hath as great & high estate in the tenemts as the lord hath in the seignior, in such case if the lord grāt the seruice vnto the tenant in fee, this enureth by way of extinguishment. ¶ causa patet.

¶ Also, if there be lord & tenāt, & the tenant maketh a lease to one for term of life, sauing ꝯ reuersiō vnto him, if the lord grāt the seignior to ꝯ tenāt for terme of life in fee, in this case it behoueth ꝯ he in ꝯ reuersiō attorne to the tenāt for term of life by force of ꝯ grāt or otherwise ꝯ graūt is void, for this ꝯ hee in

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the reuersion is tenant to the lord.

¶ Also if there be lord & tenaunt, and the tenant holdeth of the lord by twenty maner of seruices, and the lord graunteth his seignory to another, if the tenant paye or doe anye of the seruice to the grauntee, thys is a good attournement of and for the seruyces though that the tenauntes entent was to attourne but of the same parcel, for this ꝑ the seigntourye is an whol thing, though ꝑ ther bee diuers maner of seruices ꝑ the tenaunt ought to do.

¶ Also if ther be Lord and tenaunt and the tenant holdeth of the Lord by many maner of seruices, & the Lord graũteth ꝑ seruices to another by fine. if the graũtee sue a Scire facias out of the same fine for any parcel of seruices, & hath iudgement to recouer, thys iudgmt is a good attournement in the lawe for al the seruices.

¶ Also if the Lorde of the rẽt graunteth the seruices vnto another, & the tenant attourneth by a peny and after the grauntee distreineth for rent behind, and the tenaunt to him maketh the rescous. In this case ꝑ graũtee shal not haue assise of ꝑ rẽt but he shal haue a writ of rescous, for ꝑ the gifte of the peny was but by way of attornement. But if the tenant hadde geeuen vnto the grauntee the said peny as parcel of ꝑ rent or an half peny or a farthinge by way of seisine of the rent, then this is a good attournement and also it

is

is a good seisin to the grauntee of the rēt, & then vpon such rescous ỹ grauntee shal haue assise &c.

¶ Also if a mā let tenemēts for terme of yeres by force of which ỹ lessee is seised, & after ỹ lord grāteth by his deed the reuersion to another for terme of life, or in tail, or in fee, it behoueth him in this case ỹ the tenāt for term of yeres attorne, or otherwise nothīg passeth to such grātee by such deede, & if in this case ỹ tenāt for terme of yerez attorne to ỹ grāntee, then by & by passeth the franketenemēt to ỹ grāntee by such attournemēt without any liuery of seisin &c. for this if any liuery shalbe made or needeth to be made in such case, thē ỹ tenāt for term of yeres shalbe at ỹ time of ỹ liuery of seisin out of his possession whyche should be against reason.

¶ Also if land be let to a man for terme of yeres the remainder to another for terme of life, reseruing to the lessour a certain rent by yeare and liuery of seisin is made vpon this to the tenaunt for terme of yeares, if hee in the reuersion in such case grant his reuersiō to another &c. and the tenaunt ỹ is in the remainder after the terme of yeres attourneth this is a good attournement, & hee to whom the reuersion is grāted by force of such attournemēt shal distraine the tenant for terme of yeares for ỹ rent due after such attournement though the tenant for terme of yeares neuer attourned vnto him, & the cause is for

that

that where the reuersion is dependaūt vpon the state of franktenement, it suffiseth ꝯ the tenant of the franktenement atturne vppon such graūt of reuersion &c. & it is to wyte, ꝯ where a lease for terme of yeres or for terme of life, or a gift in ꝯ taile is made to any mā, reseruing to such a lessor or donor certein rēt if such a lessor or donor grāt his reuersiō to another, & ꝯ tenāt of the land attourne, the rent passeth to ꝯ grauntee, though in ꝯ deede of ꝯ graunt of reuersion, no mēcion is made of the rēt, for this, ꝯ ꝯ rent is incident to the reuersion in such case, & not econuerso. For if a mā will graūt ꝯ rēt in such case vnto another reseruing to him the reuersion of the lād, though ꝯ tenāt attorn to ꝯ grauntee, this shall be but a rent seck &c.

¶ Also if a man let land vnto another for terme of life, and after such lease hee confirmeth by a deede the estate of the tenaunt for terme of life, the remainder to another in fee, & the tenaunt for terme of life accepteth the deede, then is ꝯ remainder in deede to him to whom ꝯ remainder was geuen or limytted in ꝯ same deede, for by ꝯ acceptāce of the tenaūt for terme of life of the same deed, thys is a graūte of him and so an attournemēt in lawe, but yet he in the remainder shall haue none acciō of waste nor other benefit by such remainder, but if ꝯ he haue the same deede in his hand, by which the remainder was grāted vnto him, and for this that in suche case

the

the tenaũt for terme of life wil retain to him the deede, to the entent that he in the remainder shal haue no acciõ of waste against him, for this that he may not come to haue ỹ possession of the deed &c. It shalbe good in such case for him in the remainder, that a deed indented be made by him that wil make the cõfirmacion, & the remainder euer &c. And he that maketh such confirmacion delũ a part of the Indenture to the tenaunt for term of life, & the other parte to him ỹ hath ỹ remainder. And then he by shewing of the part of ỹ indenture may haue an accion of waste agaiñ the tenant for terme of life, & also other aduantage that he in the remainder may haue in such case.

¶ Also, if two iointenantes be, which letteth the lande to another for terme of life, yelding for ỹ land to thẽ & their heirs a certain rent by yeare. In this case if one of the two iointenantes in the reuersion releaseth to the other iointenant in the same reuersion, this release is good and he to whome the release is made, shal haue onelye the rent of ỹ tenãt for tearme of life, and shal haue a writte of waste against them though he neuer attourned by force of such release, and the cause is for the priuitie that once was betwene the tenaũt for terme of life, and them in the reuersiõ. In the same maner, and for the same cause it is wher a mã letteth land to another for terme of his life, ỹ remainder to another

for

for terme of his life, reseruing the reuersiō to the lessour, in this case if he in the reuersion release to him in the remainder &c. & to hys heires all his right &c. then hee in the remainder hath a fee &c. & shal haue a writ of waste against the tenant for terme of life without any attournement of him &c.

¶ Also if a lease bee made for terme of lyfe the remainder vnto another in the taile, ỹ remainder ouer to ỹ right heirs of ỹ tenāt for terme of life, in this case if the tenāt for terme of life grāt his remainder in fee to another by his deed, ỹ remainder by & by passeth by hys deed thout any other attournemēt. For if any ought to attorne in this case, it should be ỹ tenāt for terme of life. And it were in vain ỹ he atturne vpon his owne graunt &c.

¶ Also, if there be lord & tenant, and the tenant holdeth of the lorde by certain rent and knights seruices, if the Lord grāt the seruyces of the tenant by fine, the seruyces be by and by in the grauntee by force of the fine, but yet ỹ Lord may not distrain for any parcel of his seruices without attornemēt. But if the tenant dye his heir being within age, ỹ lord shal haue the ward of the body of ỹ heir and of the land &c. howbeit that he neuer attorned. For this ỹ the seigniorie was in the graunt maintenant by force of ỹ fine. And also in some case if the tenaunt dye wythout heire, the Lord shall haue the tenauncye by way of Eschete. In the same maner it is if a

man graunt ỹ reuersion to his tenāt for terme of life to another by fine, the reuersiō passeth not to the grauntee by force of the fine, but ỹ grauntee shall neuer haue accion of waste without attournemēt &c. But yet if the tenāt for terme of life aliene in fee, the grauntee maye enter &c. for this that the reuersion was in him by force of the fine, & such alienaciō was to his disenheritance. But in this case where ỹ Lord graūteth ỹ seruices of his tenant by fine, if the tenāt die, his heirs being of ful age ỹ graūtee by the fine shal not haue the relefe nor neuer shal distrain for the relefe, excepte there had bene some attornement of ỹ tenāt that died &c. for of such thinges that lieth in distresse, vpon the which a writ of Replegiare is sued &c. a man ought to auow the taking good and righteous &c. ther ought to be attornemēt of the tenant. Howbeit ỹ the graūt of such seruices be by fine. But to haue ward of landes & tenements so holden duringe the nonage of the heire or them to haue by way of eschete, there needeth not anye distres &c. but an entrie in the land by force of ỹ righte of the seigniory that the graūtee hath by force of the fine.

¶ Also in auncient Boroughes or Cyties wher tenements within the same boroughes or cities bene deuisable by testament by the custome and the vse &c. if in such borough or citie a man be seised of rent seruice or of rent charge, and he deuiseth such rent or seruice to ano-

another by his testament & dieth &c. In this case he to whō ỹ deuise is made may distrain for the rent or the seruices behind, howbeit ỹ the tenant neuer attorned. In the same maner it is wher a man letteth such tenements deuisable to another for terme of life, or for terme of yeare, & deuised the reuersion by his testament to another in fee or in fee taile and dieth, & anone after the tenant maketh wast, he to whom the deuise was made shall haue a writ of wast, howbeit ỹ the tenāt neuer attorned, & the cause is for this ỹ the wil of the deuisor made by the testament, shalbe performed after the intēt of ỹ deuisor, & so ỹ effecte of this lieth vpon the attorning of the tenant &c. Then percase the tenant would neuer attourne, then the wil of the deuisour should neuer be performed, & therfore the deuisee shal distrain or haue an accion of wast &c. Without attournement, for if a man deuise such tenements to another by his testament (habēdū sibi imperpetuū) and dieth, and the diuisee entreth he hath a fee simple, causa qua supra, & yet if a deed of feoffement were made to hym by the deuisour of the same tenementes (habendū & tenendum sibi imperpetuum) if liuerye and seisin were neuer there vppon made hee shall haue none estate but for tearme of lyfe &c.

¶ Also if a man seised of a Manour whyche is parcel in demeasne, and parcel in seruices and thereof bee disseised, but the tenaunte

which holdeth of the manor, neuer attorneth to the disseisour in this case, howbeit ỹ ỹ disseisour die &c. & his heires in by discent, yet may the disseisy distraine for the rēt being behind & haue the seruice, but if ỹ tenāts come to ỹ disseisour & say we become your tenāts &c. or otherwise make attournement to hym &c. & after ỹ disseisour dieth seised &c. then the disseisy may not distrain for the rēt, for this ỹ all the maner discēdeth to the heire of the disseisour. But if one hold of mee by rēt seruice which is a seruice in grosse, & another ỹ no right hath, claimeth the rent & receiueth & taketh the same rent of my tenant by coherse on of distresse or by other fourme & so disseyseth me by taking such rent, howbeit ỹ suche a disseisor dye seised by such taking of the rēt yet after his death I may wel distrain for ỹ same rēt being behind before the death of the disseisor & after his death, & the cause is this ỹ suche is not my disseisor but by election at my will, for howbeit ỹ he toke the rēt of ỹ tenant, I may at al times distrain my tenāt for the rent behinde &c. so it is to me but as if I will suffer the tenant to bee by so much tyme behind of paiment to me of ỹ same rēt, for ỹ paimēt of my tenaunt to another, to whom hee ne ought to pay no disseisine to me, nor shall not put mee out of my rent wythoute my will and election, for howbeit that I may haue assise against suche a taker &c. yet this is at my election, if I will take him as

my

my disseisour, or not so that such discents of rents in grosse ne putteth not out the lordes frō their distresse, but that at eche time they may well distrain for the rēt behind. & in thys case if after the deceas of him y so wrōgfully toke the rent, I graunt by my deed the seruices to another, & the tenant attorneth this is good inough, and the seruices by such graunt & attournement incontinent be in the grātee &c But otherwise it is wher the rēt is pcell of the same manor, & the disseisor dieth seised of the whole manor, as in the case beforesaid.

¶ Discontinuance. Cap. xi.

DIscontinuance is an auncient woorde in the law, and hath diuers significations & but as to one entent it hath such a significati on, that is to say, wher a man hath aliened to another certain lands or tenemēts. & diethe, & another hath right to haue the same landes or tenements, but he ne may enter in thē, because of suche alienation &c. As if an Abbot seised of certain lands and tenements in fee, & he alieneth the same lands & tenemēts to an other in fee or in taile, or for terme of life, and the abbot dieth his successour may not enter in the same landes and tenementes, howbeit that if that he hath right to haue thē as in the right of the house, but hee is put to his accion to recouer the same landes or tenements whiche is called a writte De ingressu sine

assensu capituli.

¶ Also if a man seised of lande as in ꝯ right of his wife &c. and therof enfeoffeth an other &c. & dyeth, the wife may not enter, but shee is put vnto her acciō the which is called Cui in vita.

¶ Also if tenant in the taile of certain lande therof enfeoffeth another &c. and hath issu & dieth &c. his issue may not enter in the lande, howbeit that he hath right and title to that, but that he is put to his accion, that is called a Formedon in the discender.

¶ Also if there be tenant in the taile, & the reuersion is to the donour & to his heirs if the tenant make a feoffement &c. and dieth wout issue, he in the reuersion may not enter, but is put to his accion of Formedon in ꝯ reuerter & in the same maner it is wher the tenant in the taile of certain land, where ꝯ remainder is to another in the taile, or to another in fee, if ꝯ tenāt in the taile alieneth in fee, or in fee taile &c. & after dieth wout issue, they in the remainder maye not enter, but bee put to their writ of Formedon in the remainder &c. & for this ꝯ by force of such feoffemt & such alienacions in ꝯ cases aforesaid, & in like cases they which haue title & right after ꝯ death of such a feoffor or alienor may not enter, but be put to their accions vt supra, therfore such feoffements & alienaciōs be called discontinuāces.

¶ Also if a tenant in ꝯ taile be disseised, & hee releaseth by his deed to the disseisour & to his

heires

heires of the right ꝑ he hath in the ſame lād this is no diſcontinuance, for this ꝑ nothing of right paſſeth to the diſſeiſor but for terme of life of ꝑ tenāt in the taile ꝑ made the releaz &c. But by ꝑ feoffement of tenant in the tail a fee ſimple paſſeth by the ſame feoffement by force of linery of ſeiſin &c. but by force of a releaſe nothing paſſeth but the right ꝑ he may lawfully & rightfully releas without hurt or damage to other parſons which therto haue right after his deceaſe &c. & ſo it is a great diuerſitie betwene a feoffement of the tenant in the taile & a releaſe of the tenant in the tayle. But it is ſaid that if tenant in the tail in this caſe releaſe to the diſſeiſour & bindeth hym & his heires to warrātiſe &c. & dieth, and thys warrantiſe diſcendeth to his iſſue then ꝑ is a diſcontinuance becauſe of warrātiſe &c. But if a mā haue iſſue a ſonne by his wife & dieth & after he taketh another wife, & the tenemēts be geuen to him & his ſecōd wife, & to ꝑ heirs of their two bodies engendred, & they haue iſſue another ſonne, then the ſecond wife dieth, & after the tenant in the taile is diſſeiſed, & he releaſeth to his diſſeiſor all his right &c. & bindeth him & his heirs vnto warrantiſe & dieth this is not diſcontinuance to the iſſue in the taile by the ſecond wife, but he may well ēter &c. for this that the warrantiſe diſcended to his elder brother, that his father had by hys firſt wife.

In the ſame maner wher tenemēts be diſcen-

dable to the yonger sone after the custome of borough English be entailed &c. & the tenant in ỹ tail hath issu two sones & is disseised & he releaseth to his disseisor al his right w warrãtise & dieth, ỹ ponger sone may enter vpon ỹ disseisor notwithstãding ỹ warrantise, for this ỹ the warrãtise discõdeth to ỹ elder sone for away the warrãtise discendeth &c. to him ỹ is heire by the cõmon law.

¶ Also if an Abbot be disseised. & he releaseth to the disseisor with warrauntise, this is no discontinuãce to the successor, for this ỹ nothing passeth by this release but the right ỹ he hath during the time that he is Abbot and this warrantise is expired by this prtiaction or by his death.

¶ Also, if tenant in the taile be seised of certain land. & he letteth the same land for term of yeres, by force of which lease the lessee is in possession, to which possession the tenaunt in the taile by his deed releaseth al his right & that he hath in the same land to the lessee and to his heirs for euer, this is no discontinuãce but after the decease of the tenant in the tail his issue may wel enter, for this that by such release nothing passeth but for terme of lyfe, of the tenaunt in the taile. In the same maner if the tenaunt in the taile confirme the estate of the lessee for terme of certain yeres to haue and to holde to him and to his heyres, this is no discontinuaunce, for this that nothing passeth by such confirmacion, but the

estate

estate that the tenāt in the taile had for term of his life.

¶ Also if a tenant in ỹ taile by his deed grāt to another al his estate ỹ he hath in the tenemēts entailed to him, to haue & to hold al his estate to ỹ other & to his heirs for euer, & deliuereth seisin according, in this case ỹ tenāt to whom the alienacion was made hath nōe estate but for terme of life, of ỹ tenāt in taile & so it may wel be proued ỹ the tenant in the tail may not grāt ne aliē ne make any rightful estate of ỹ frāktenemēt to another plō but for terme of his own life &c. For if ¶ geus certain lād in ỹ taile to a mā, sauing ỹ reuersion to me, & after the tenant in the taile ēfeoffeth another in fee, the feoffee hath no right estate in the tenemēts for two causes. One is for ỹ that by such feoffemēt my reuersiō is discontinued which is a wrōg act & not a rightful act. Another cause is, if ỹ tenāt dye & hys issu sueth a writ of formedō against ỹ feoffee ỹ writ shal say & also ỹ declaraciō ỹ ỹ feffee wrongfully him defoyced, therfore if wrōgfully he him defoyced he had no right estate.

¶ Also, if land be let to a man for terme of his life, the remainder to another in ỹ tail if he in the remainder wil grāt his remainder to another in fee by his deed, & ỹ tenāt for term of life attourneth, this is no discontinuance of the remainder.

¶ Also if a man be tenant in the taile of advowson in grosse or of cōmon in grosse, if he

by

by his aduowſō in groſſe or of cōmō ingroſſe if he by his deed will grāt ꝑ aduowſon or the cōmon to another in fee, this is no diſcontynāce for in ſuch caſe the grātee hath no eſtate but for terme of the tenant in ꝑ taile ꝑ made this graūt &c. Note wel that ſuch things as paſſe by way of grāt made by deed & not by act in the countrey &c. ſuch grāt makethe no diſcontinuāce as in the caſe afore ſaid & other like caſes &c. And howbeit ꝑ ſuch things bee graunted in fee, by fine leuied in the kynges court &c. yet they make no diſcontinuāce &c.

¶ Alſo, if a man be ſeiſed in taile of landes deuiſable by teſtament &c. & he deuiſeth it to another in fee, and dieth, & the other entreth this is no diſcontinuance, for this that no diſcontinuance was made in ꝑ life of the tenāt in the taile &c.

¶ Alſo, if an Abbot haue a reuerſiō or a rēt ſeruice, or a rent charge, & will graūt ꝑ reuerſion, rent ſeruice, or rent charge to another in fee, & the tenant attorneth &c. this is no diſcōtinuance. In the ſame maner it is where an Abbot is ſeiſed of aduowſon or of ſuch things that paſſe by way of graunt without liuerye of ſeiſin &c.

¶ Alſo if there be graundfather, tenaunt in the taile, father and ſonne, and the graundfather is diſſeiſed by the father, & the father maketh a feoffement in fee without warrantiſe, and dieth, and after the graundfather dieth, the ſonne may well enter vppon the feoffee for

for this ỹ this was no disçontinuaunce, in so much ỹ ỹ father was not seised by force of ỹ taile at ỹ time of the feoffement &c. but was seised in fee by disseisin made to ỹ grādfather.

¶ Also if a woman inherite haue an husband within age, which maketh a feoffement of ỹ tenements of the wife and dieth, it hath bene questioned if the wife may enter or not. And it semeth to some men ỹ the entry of the wife after the death of her husband shalbe lawful in this case, for when her husband made such a feoffement &c. he might wel enter notwithstanding such feoffement during the couerture, & he might not enter in his own righte but in ỹ right of his wife &c. Ergo such right ỹ he had to enter in the right of his wife &c. ỹ right of entre abideth to ỹ wife &c. after his decease, & it hath ben said ỹ if two iointenāts being within age made a feoffement in fee, & one of the childrē dieth, & the other suruiueth in so much ỹ both childrē might enter iointly in their liues, this right of entry groweth all to hym that suruiueth, and so he may enter into the whole &c.

¶ Also the heire of the husband ỹ made ỹ feoffement within age may not enter, for this ỹ no right discendeth to such an heir in the case aforesaid, for this that ỹ husbande had neuer any thing but in the right of his wife. And also whē a child maketh a feoffement being within age this shal neuer grieue nor hurt him but that he may well enter &c. And thys shoulde

be

be against reason that such a feoffement made by him that was not able to make such a feoffment shal grieue or hurte other to toll other of their entries &c. And for these causes it seemeth to some ỹ after ỹ death of such an husbād so being within age at the time of ỹ feoffemēt &c. ỹ his wife may wel enter &c.

¶ Also if a woman inheretrice taketh an husband & hath issue a sonne & the husband dieth & she taketh another husband, & ỹ second husband letteth ỹ land that he hath in the right of his wife to another for terme of his life, & after the wife dieth, & after the tenāt for term of life surrendreth his estate to the secōd husbād &c. Enquire if the sonne of the wife may enter or not, in this case vpō ỹ second husbād during the life of the tenāt for terme of lyfe. But it is clere law in this case that after the death of the tenant for terme of life, the sōne of the wife may wel enter, for this ỹ the discontinuance ỹ was made alonelye for terme of life is determined &c. by ỹ death of ỹ same tenant for terme of life &c.

¶ Also if the parson or vicar of a church alienne certain lands or tenements parcel of his glebe &c. to another in fee & dieth or resigneth &c. his successour may wel enter, notwithstāding such alienation as it is said in a Nota, Anno 2. H. 4. Termiñ Mich. qō sic incipit. Nota qō dictū fuit pro lege. In a writ of accompt brought by ỹ master of the colledge, ỹ if a ꝑson or a vicar graūt certaine landes,

that

that is of ꝯ right of his church to another & dieth or chaungeth ꝯ his successor may ēter. And I trow ꝯ cause is for this ꝯ the ꝑson or vicar ꝯ is seised &c. in right of ꝯ churche hath no right of ꝯ fee simple in ꝯ tenemēts & ꝯ right of the fee simple therof abideth in anye other ꝑson. And for this cause his successour maye wel enter, notwithstāding such alienaciō &c. for a Bishop may haue a writ of right of teēts of right of his Bishoprick for this ꝯ ꝯ right of fee simple abideth in him & in his chapiter & a Deane maye haue a writ of right &c. for this ꝯ the right abideth in him & his capiter & an abbot may haue a writ of right, for this ꝯ the right abideth in him & in his couent, & sic de alijs casib⁹ consimilib⁹ &c. but a ꝑson or vicar may not haue a writ of right &c. but ꝯ highest writ ꝯ they may haue, is a writte de Juris vtrum, the which is a great proofe ꝯ the right of fee simple is in obeiance, that is to say al onely in the remembrāce, entendemēt and consideracion of the law, for me seemeth that such a thing in such a right ꝯ is said in diuers bookes to bee in obeisance is asmuch to say in latin ℔. talis res vel tale rectū que vel quod non est in homine adtunc superstite, sed tantummodo est & consistit in considerationē & intelligentia legis &c. & quidā alii dixerunt talē rem, aut tale rectū for in nubib⁹ &c. But I suppose ꝯ they vnderstand by these wordes in nubib⁹ &c. as I haue said before.

Also if a parson of a Church dye, now the

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frankstenement of ỹ glebe of the personage is in no man during the time that the personage is void, but is in obeyance, ỹ is to say, in consideracion & intelligēce of the law til another be made pson of the same Church, & immediately when another is pson the frāktenemēt in deed is to him as successour.

¶ Also some men paraduenture wil argue & say, ỹ in so much ỹ the pson & thassent of the patron & Ordinary, may grāt a rent charge out of the glebe of his personage in fee, & so charge the glebe of the personage perpetually Ergo they haue fee simple, or two or one of thē hath fee simple at the least &c. So thys it may be aūswered ỹ it is a principal in law ỹ of euery land ther is a fee simple in sōe mā or els the fee simple is in obeisaunce &c. And another principall is, ỹ euery land of fee simple &c. may be charged with a rent charge in fee, by one way or by another &c. & whē such rent is graūted by the deed of the parson, ỹ Patron, and the Ordinary in fee, none shall haue no preiudice nor losse by force of suche graunt. But the grauntours in their lyues & the heire of the patron, and successor of the Ordinary after their deceases, and after such charge if the parson die, his successour maye not come to the said Church to be parson of the same Church by the law. But by presētment of the patron and admission and institucion of the Ordinary &c. And for this cause it behoueth ỹ the successour hold him cōtent,

and

ind agreed with that which his patrō & or-
dinary lawfully haue dōe before. But ẏ cause
ẏ such rēt charge is gone, for this is ẏ they
which had entries in the said church, ẏ is to
say, the patron after the law tēporal, & ẏ Or-
dinaries after the law spirituall, were assēted
as parties vnto such a charge &c. and this see
meth the very cause ẏ such glebe land may be
charged in perpetuitie &c.

¶ Also if a Bishop alien lands which bene
parcel of his bishoprick, & dieth, this is a dis-
cōtinuāce to his successor, for this, ẏ he may
not enter, but is put to his writ De ingressu
sine assensu Capituli &c.

¶ Also if a Deane alien lande parcell of hys
Deanry & dieth, his successour may not ēter
but he may haue a writ De ingressu sine as-
sensu Episcopi & capituli &c.

¶ But if the Dean & the Chapiter haue lād
to thē & to their successors in cōmon &c. How
bet ẏ the Dean alien such landes his succes-
sours may well enter, for this that ẏ frank-
memēt at the time of the alyenaciō, was as
wel in ẏ chapiter as in the deane. But wher
he Dean is sole seised as in right of his de-
anrie, then such alienacion is discontinuance
o his successor, as it is afore said. Also some
men wil argue and say, that if an Abbot and
is conuēt be seised in their demeane as of fee
f certaine land to thē & to their successours
c. and the Abbot without assent of his Co-
nt alieneth the same lande vnto another,

and

& dyeth this is a discontinuance to his succes
sours &c. & by the same they wil say, ỹ wher a
Dean & a Chapiter be seised of certain land
to thē or to their successors, if the Dean alie
the same lāds &c. this shalbe a discontinuāce
to his successors. So ỹ his successor ne may
not ēter &c. To this may be answered, ỹ ther
is a great diuersitie betwene ỹ said two cases
for when an abbot & the couent be seised &c.
yet if they be disseised, ỹ abbot shal haue as-
sise in his owne name without naminge of
his couēt &c. And if a man may or will sue a
Precipe qō redd, of the same lāds whē they
bee in the hands of the Abbot, and his couēt
it behoueth that such an accion be sued against
the Abbot onely without naming of the couent
&c. for this that al they be dead persons to the
law, saue onely the abbot ỹ is soueraigne &c.
& this is cause of the soueraintie &c. for els he
should be as one of ỹ other monks of ỹ Co-
uent &c. But the Dean & the Chapiter be no
dead parsons in the law &c. For eche of them
may haue an accion by him selfe in diuers ca-
ses & of such lāds or tenemēts which ỹ dean
and Chapiter haue in cōmon &c. if they ben
disseised, that the Dean & the Chapiter shal
haue assise, & not the Dean alone, & if another
wil haue an accion real of such lādes or tene-
ments against the Dean &c. it behoueth him
to sue against the Dean and Chapiter, and
not against ỹ Dean alone &c. & so appeareth
greate diuersitie betwene these two cases.

¶ Also if ỹ master of an hospital discontinue certain lād of his hospital, his successors may not enter, but he is put vnto his writte De ingressu sine assensu confratrū & sororū suarū, & al such writs do plainely appere in ỹ Register &c.

¶ Remitter. Cap. xij.

REmitter is an auncient terme in the law, and it is where a man hath two titles to landes or tenements, ỹ is to say, one of an elder title, and an another of ỹ later title, & hee commeth to the lande by the later title, yet ỹ lawe adiudged him to be in by ỹ force of the elder title, for this ỹ the elder title is ỹ more sure title, and the more worthy title, & then when a man is iudged in by force of ỹ more elder title, this is vnto him said a Remitter, for this ỹ the law shall admit him to bee in the lande by the elder title, as if the tenaunt in the tatle discontinue the taile, and after he disseiseth his discontinue, and so dieth seised, whereby the tenements discend to his issue, as to his colin inheritable by force of ỹ tail, in this case this is to him to whom the tenements discend whiche hath right by force of ỹ taile, a remitter in the taile taken, for ỹ, ỹ the lawe shal put and adiudge him to bee in by force of the taile, whiche is his elder title, for if he shal bee in by force of discent thē the discontinue maye haue a writ of Entre vppon the disseysin in the Per against

him, and recouer the tenementes & his dam-
mages, but in so muche ꝑ hee is in my force
of the taile, the tytle and the interest of the
discontinue, is all vtterly annulled and defea
ted &c.

¶ Also if tenant in the tail enfeoffe in fee his
sonne or his cosin inheritable by force of the
taile, the which sonne or cosin at the time of
feoffement is within age, & after the tenaunt
in the taile dieth, and he to whom the feoffe-
ment was made, is his heir by force of ꝑ ty-
tle in the taile, this is a remitter to the heire
in the taile, to whom the feoffement is made.
For howbeit ꝑ during the life of the tenaunt
in the taile ꝑ made the feoffement, such heire
shalbe adiudged i by force of ꝑ feoffemt, yet
after the death of the tenaũt in the taile, the
heire shalbe adiudged in by force of the taile
&c. & not by force of the feoffemt, and though
ꝑ such an heire was of full age at the tyme
of the death of the tenant in the taile ꝑ made
the feoffement, this maketh no matter if the
heire were within age at the time of the feof
fement made to him, & if such an heire being
wtin age at the time of ꝑ feoffemt commethe
to full age, liuing the tenant ꝑ made ꝑ feof-
femt, and so being of full age, hee charged by
his deede the same land wt a common of pas-
ture, or with a rent charge, & after the tenãt
in the taile dieth. Nowe it seemethe that the
lãd is discharged of an other estate in ꝑ lãd,
then hee was at ꝑ time of ꝑ charge made, in

so

so much ꝑ he is in his remitter by force of ꝑ taile, & so the estate ꝑ he had at the time of ꝑ charge is vtterly defeated &c.

¶ Also a principal cause is why such an heir in the cases aforesaid and other cases semblable shal be said in his remitter, is for thys, ꝑ ther is no ꝑson against whom ꝑ he may sue his writ of Formedon, for against him selfe he may not sue, & he may not sue against nōe other, for none other is tenant in ꝑ frankte-nemt, & for that cause the law adiudged him in his remitter ꝑ is to say ī such plight as he had lawfully recoued ꝑ sāe lād against āother

¶ Also if land be tailed to a manne & hys wife, & to the heire of their two bodies engendred the which haue issu a daughter, and the wife dieth, and the husband taketh another, and hath issue another daughter, & discontinueth the taile, & after he disseiseth the discontinue, and so dieth seised, now the land discendeth to the two daughters. in this case as to the elder daughter that is inheritable, this is a remitter but of the halfe, and as to the other half, she is put to her accīō of Formedō, against her sister, for in this case two sisters be not tenants in parcenary, but bee tenaunts in comon, for this ꝑ they bee in by diuers titles, for ꝑ one sister is in her remitter by force of the taile, as to ꝑ that vnto her belongeth. And the other sister is in as to that, that belongeth to her in fee simple by ꝑ discēt of her father. In the same maner it is

if the tenant in ỹ taile ẽfeoffe his heires apparaunt in the taile being ỹ heire wtin age, & another iointenant in fee, & the tenant in the taile dieth. Now the heire in ỹ taile is in his remitter as to the halfe, & as to ỹ other half he is put to his writ of Formedon &c.

¶ Also if tenãt in the taile enfeoffe his heir apparãte, ỹ heir being of full age at ỹ time of ỹ feoffemẽt & after ỹ tenãt in taile dieth, thys is no remitter to the heire, for this ỹ it was his owne folly, ỹ he being of full age would take such feoffemẽt &c. But suche folly maye not be adiudged in the heir being wtin age at the time of the feoffement &c.

¶ Also if tenãt in the taile enfeoffe a womã in fee and dieth, and his issue within age taketh the woman to wife, thys is a remitter to the childe, and the wife thẽ hath nothing, for this that the husband and the wife beene but one person in the law. And in ỹ case the husband may not sue a writ of Formedone, vnlesse hee will sue it against him selfe, the which shalbe inconuenient, and for that the law iudgeth the heir in his remitter for this ỹ no folly may be aretted to him being within age at the tyme of the espousayles &c.

And if the heire be in his remitter by force of the taile, it followeth by reason that the wife hathe nothing &c. for in so muche that the husband and the wife be but one person, the land may not bee seuered by halfes, and for such cause the husband is in his remitter of

the

the whole. But otherwise it is, if suche an heire be of ful age at the time of ꝯ spousails, then the heir hath nothing but in the right of his wife.

¶ Also if a woman seised of certain lād in fee, taketh an husband, the which alienethe ꝯ same lande to another in fee, and the alyene letteth the same land to the husband and the wife for terme of their twoe liues, saynge the reuersion to the lessour, & to the heire, in this case the wife is in her remitter, and shee is seised in deede in her demean as in fee, as shee was before, for this ꝯ the taking of estate shalbe adiudged in the law the deede of the husband, and not the deede of the wife, so ꝯ no folly may be iudged in the wife that is couert ī such case. And in this case the lessor hath nothinge in the reuersion for this ꝯ the wife is seised in fee. But in this case if the lessor will sue an accion of waste against the husband and his wife, for this that the husband hath made waste, the husbād may not barre the lessour for to shewe this ꝯ the taking of ꝯ estate made vnto hī & to his wife, made a remitter to his wife, for thys ꝯ the husband is stopped to say this against his feoffement & one reprisel of estate for terme of life to him and his wife, and yet the lessoure hath no reuersion, for this ꝯ the fee simple is in the wife, so a mā may see a matter in this case, that a man shalbee stopped by a matter in deede, though no writing by deede inden-

ted or other wise be theirof made. But if in accion of wast the husband make defaulte at the graund distresse & the wife prayethe to be receiued, and is receiued, shee shall well shewe al the matter, and howe shee is in her remitter, and shal barre ꝑ iessoure of hys accion. For in euery case that ꝑ wife is receyued for default of her husband, shee shal pled and haue the same aduauntage in pledinge as she were a woman sole. And howbeit ꝑ ꝑ aleinee made no lease to the husband & his wife by deede indented, yet this is a remitter to the wife, & thoughe that the aliene ꝑ yelded ꝑ same lande to the husbande & his wife by fine for terme of their liues, yet this is a remitter to the wife for this ꝑ the wife couert that taketh estate by fyne shal not be examined by the Justices. And here note well ꝑ when anye thinge shal passe fro the wife ꝑ is couert of husband by force of a fine ꝑ husband and his conisaunce of right to another &c. or make a graunt & yelded to another or releasle by a fine to an other. Et sic ꝺ similib⁹ where the righte of the wife passeth from ꝑ wife by force of the same, the wife in al suche cases shalbe examined before ꝑ the fine be excepted. And such fines conclude such wiues couerte for euer. But where nothing is moued in ꝑ fine, but al onely ꝑ the husbād & the wife take estate by force of ꝑ same fine, thys shal conclude the wife for this ꝑ in such case shee shal neuer be examined.

¶ Also, if tenant in the taile discõtinue ẏ tail & hath a daughter & dieth, & ẏ daughter being of ful age taketh an husbande, and the discõtinu maketh a lease of this to ẏ husbãd & his wife for terme of theire liues, this is a remitter in deede of the wife & the wife is in by force of the taile. ¶ Causa qua supra.

¶ Also if land be geuen to the husbãd & his wife to haue & to holde to them and to the heires of their twoe bodies begotten, & after the husbãd alieneth the lande in fee, & taketh againe an estate to hĩ & to his wife for term of their two liues. In this case this is a remitter in deede to the husband & to the wife mauger the husband, it may not bee a remitter to the wife, except it be a remitter to the husbãd for this ẏ ẏ husbande & his wife bee but one pson in ẏ law, though ẏ the husband is stopped to claime this to be a remitter in him againste his alienacion & his owne reyssel as it is aforesaid.

¶ Also, if land be geuen to a womã in ẏ taile the remainder to another in ẏ tail, ẏ remainder to the third in the taile. ẏ remainder to ẏ forwerth in fee, & the wife taketh an husbãde & ẏ husbãd discõtinueth ẏ lande of the wyfe by this discontinuãce al the remainders bee discõtinued, for if the wife die without issue, they in ẏ remaĩder shal haue no remedy, but to sue their writs of Formedon in ẏ remainder when they come to their time &c. But if after such discontinuance, estate bee made to

the husband & his wife for terme of their liues, or for term of anothers life, or another estate &c. for this, ỹ this is a remitter to the wife, this is a Remitter to al those in the remainder &c. For after this that the wife ỹ is in her Remitter dieth without issue they in ỹ remainder may enter &c. without any action or suit &c. In ỹ same maner it is of thē which haue the reuersion after such taile &c. ¶ Also if a man let a house to a woman for tearme of her life sauinge the reuersion to ỹ lessoure, and after one sueth a fained & false accion against the woman, and recouere the the house againste her by defaulte, so ỹ ỹ woman may haue against him a writ. Quod ei deforceat, after the statute of Westminster ỹ secounde, Cap. iiii. now is the reuersion of ỹ lessour discontinued, so that hee ne may haue no acciō of wast. But in this case if ỹ womā take an husbande and hee that recouereth lette thy the house to the husbande & his wife for terme of their two liues, the wife is in her remitter by force of the firste lease. And if ỹ husbande and the wife make wast, the firste lessour shal haue against him a writ of wast for this, that in so muche that the wife is in her remitter, hee is remitted to his reuersion. But it semeth in this case, if he that here cōmeth by the false acciōs, wil bring an other writ of wast against ỹ husband & his wife, the husband hath noe remedie against him, but to make defaut at ỹ great distresse

&c.

&c. and to cause ỹ wife to bee disceiued & to plede ỹ matter against ỹ second lessor. and to swer ỹ ỹ act̄ by which he recouered was false & fained in ỹ law, & so ỹ wife may barre &c.

¶ Also if the husband discōtinue ỹ lande of his wife, & after taketh estate to him and to his wife, & to the third man for term of their liues or in fee, this is a Remitter to ỹ womā but as to the moity. And as for the other moity it behouethe her after ỹ deathe of her husband to sue a Cui in vita.

¶ Also if the husband discontinue ỹ lande of his wife and goe ouer the sea, and the discontinue let the same land to ỹ woman for term of life, & deliuer to her seisine, & after the husband commeth and agreethe to ỹ liuerye of seisine, this is a Remitter to the womā, & yet if the woman had bene sole at ỹ time of her lease made to her, this should be to her a remitter, but in so much as she was couert baron at the time of the lease, & the liuerye of seisin made to her thoughe that shee onelye toke ỹ liuery of seisine, this was a Remitter to her, because a woman couert shalbe adiudged as an infāt ỹn age, in such case &c. Enquire in this case, yf ỹ husbande when hee commeth againe wil disagree to the lease & liuerye of the seisine made to his wife in hys absēce, if this shal put the woman from her Remitter.

¶ Also, if the husband discontinue the tenements of hys wyfe, & the discontinue rs dis=

disseised, & after the disseisour letteth ꝯ said tenemẽtz to the husband & his wife for terme of life, this is a remitter to the wyfe, but yf the husband & the wife were of coun or cõsent ꝯ the disseisin should be made, then it is no remitter to the wife, because she is a dysseisoures. But if the husband were of coun & consent to the disseisin, & not ꝯ wife, then such lease made to the wife is a remitter, because ꝯ no default was in the wife.

¶ Also, if such a discontinue had made estate of freehold to the husbãd & to the wife made by indenture vpon cõdicion &. reseruinge to the discontinue a certain rente, & for defaulte of paiment a reentrye, & because ꝯ the rẽt is behind, the discontinue entreth of thys rent, the womã shal haue assise of nouel disseisin after the death of her husbande againste the discontinue, because ꝯ the condicion was wholy adnulled, in so much as ꝯ womã was in her remitter, yet ꝯ husband with his wife could not haue assise because the husband is stopped.

¶ Also if the husband discontinue the tenements of his wife, and take the estate againe for terme of his life, the remainder after his decease to this wife for terme of her life, in this case this is no remitter to the wyfe during the lyfe of her husbande, because that during the lyfe of the husband, the wife hath nothing in the freehold, but if in this case ꝯ wife ouer liue the husbãd, this is a remitter

to

to ỹ wife becauſe ỹ a frechold i law is fallen vpon her manger her wil, & in ſo much ỹ ſhe can haue noe accion againſt none other plō, & againſt her ſelf ſhe can haue no acciō there fore ſhee is in her remitter. For in thys caſe though ỹ the womā enter not in the tenemtz yet a ſtraunger ỹ hathe cauſe to haue accyon may ſue his accion againſt the womam of the ſame tenements becauſe ſhe is tenāt in law though ſhee bee not tenaunt in deede, for tenaunt of franktenement in deede is he, ỹ yf he bee diſſeiſed of franktenement maye haue aſſiſe, but the tenant in the law before his entre ſhal haue no aſſiſe, & if a man ſeiſed in fee of certain land hath iſſue a ſonne which taketh a wife, & ỹ father diethe ſeiſed, & after ỹ ſōne dieth before any ētry made by hym into ỹ land, ỹ wife of the ſonne ſhalbe ēdowed in the land, & yet he had no franktenemēt in ỹ deede, but he had a fee & a franktenemēt i law & ſo note ỹ a pꝛecipe qō reddat may as welbe maintained againſt him ỹ hath ỹ franktenemēt in law, as againſt him ỹ hath franktenement in deed.

¶ Alſo if a tenant in the taile haue iſſue two ſonnes of full age, and he letteth the tayled lande to the elder ſonne for terme of his life the remainder to the ponger ſōne for tearme of his life, and after the tenāt in the taile dieth. In this caſe ỹ elder ſonne is not in hys remitter becauſe he toke eſtate of his father but if ỹ elder ſōne die without iſſu of his bodie

thē this

this is remitter to ỹ ponger bzother because hee is heire in the taile and a franktenemēt in the law is fallē vpon him by force of ỹ remainder, and there is none against whōe he may sue his accion &c. In the same maner it is wher a mā is disseised & ỹ disseisoure dyeth therof seised, and the tenements discend to his heire & the heire of ỹ disseisor maketh a lease to a man of the said tenements for terme of life, ỹ remainder to ỹ disseisor for term of life or in fee taile or in fee, & the tenāt for terme of life dieth. Now this is remitter to ỹ disseisi &c. Causa qua supra,

Also if tenant in the taile enfeoffe his sōe and another of the tailed land in fee, & lyuerye of seysen is made to the other according to the deed, the sonne not knowinge thereof nor agreeing to the feoffement, and after hee ỹ tooke the liuery of seisin dieth, and the sōe occupieth not the land nor taketh anye profite of the land duringe the life of his father and after the father dieth, nowe this is a remitter to the sonne, because the freeholde ys fallen vpon him by the suruiuoure and noe defaute was in him, because he neū agreed &c, in the life of his father, and there is none against whome he maye pursue his writ of Formedō &c. For if a man be disseised of certein lande & the disseisor maketh a deed of feoffement, wherof he enfeoffeth B. C. & D. And the liuery of seisine is made to B. & C but D. was not at the liuerye of seisine nor

neuer

ner agreed to the feoffemēt nor never would take the profits &c. And after B. & C. die, & D. ouerliueth them, and the disseisi bringeth his writ, sur disseisin in the Per against the same D. he shal shew al the matter, & how ꝑ he neuer agreed to the feoffemēt, & so he shal discharge himself of dammages so ꝑ the demandant shal recouer no damag against hī, though ꝑ he be tenaunt of franktenement of the lād. And yet ꝑ statute of Glouceſter will ꝑ the disseisi shal recouer damages on a writ of entry grounded vppon the nouel disseisin against him ꝑ is foūd tenaūt. And this is a proofe in the other case that in so much as ꝑ issue in the taile commeth to ꝑ franktenemēt not by his deed nor by his agreemēt but after the death of his father this is a remitter to him, in so much ꝑ hee can sue an accō of formedon against none other person.

¶ Also if an abbot aliene the lande of hys house to another in fee, and the aliene by his deede chargeth the lād with a rent charge in fee, & after the aliene enfeoffeth the abbot & licence to haue and to holde to the abbot and his succeſſours for euer, & after the abbbot dyeth & another is cholen & made abbot. In this case the abbot ꝑ is the ſucceſſoure, and his couent bee in their remitter. & shal holde the lande discharged, because ꝑ the same abbot cānot haue any accion of this writ of entre Sine aſſēſu capituli of ꝑ sāe lāds against none other person. In the same maner it is

where

Where a biſhop or a dean or other ſuch pſõs alien &c. without aſſẽt &c. And after the Biſhop taketh eſtate again of the ſaid lande by licence to him, & to his ſucceſſours, and after the Biſhop dyeth, his ſucceſſour is in his remitter as in the right of his church, & ſhall defete the charge &c. Caula qua ſupra.

¶ Alſo if a man ſue a falſe accion againſt tenant in the taile, as if a man will ſue againſt him a writ of Entre in the poſt, ſuppoſinge by his writ that the tenant in the tayle had not his entre but by A. of B. ỹ diſſeiſed the graundfather of the demaundaunt, and that is falſe, and he recoureth againſt the tenant in the taile by default, & ſueth execution, and after the tenãt in the taile dieth, his iſſu maye haue a writ of Formedon againſt him that recouered, & if he will pleade the recouery againſt the tenaunt in the taile, the iſſue maye ſay that the ſaide A. of B. diſſeiſed not the graundefather of him that recouered in the maner as his writ ſuppoſeth and ſo he ſhall falſifye his recouery. Alſo ſuppoſe, that that was true that the ſaid A. of B. diſſeiſed the graundfather of the demaundaunt ỹ recouered, and that after the diſſeiſin the demoundant or his father, or his graundfather, by a deede had releaſed to ỹ tenaũt in ỹ taile all ỹ right ỹ he had in the lande &c. And this not withſtanding he ſueth his writ of entre in ỹ poſt againſt the tenant in the tail in ỹ maner as is afore ſaide, and the tenaunt in the taile

plea-

pleadeth to him, that ꝯ saide A. of B. disseised not his grandfather as his writ supposeth, & vppon this they be at issue, and the issue is found for the demaundant whereby he hath iudgement to recouer, and sueth execucion, & after the tenāt in the taile dieth, his issu may haue a writ of Formedon againste hym ꝯ recouered. And if hee will plede the recouerye by accion tried against his father tenaunt in the taile, then he may shew and plede the release made to his father, and so the accyon ꝯ was sued was faint in the law &c. And it seemeth ꝯ faynt accion is as muche to saye in English, fained accion, that is to say, suche accion that thoughe the woords of his writ bee true, yet for certaine causes hee hath noe cause nor title by the law to recouer by ꝯ sāe accion. And false accion is where ꝯ woords of the writ be false, & in the two casesbefore said if the case were suche that after suche a recouery, and execucion therof made, the tenaunt in the taile had disseised him that recouered, and thereof dyed seised, whereby the land also discended vnto his issue, thys is a Remitter to the issue, and the issue is in by force of the tayle, and for that cause I haue put these twoe cases beeforesayde, to ensourme thee my sonne, that issue in the tail by force of a discent made to hym after a recouerye, and execucion thereof made agaynste his aunceſter, may be as wel in his remitter as he should bee by discent made to him after

a dis-

a discontinuance made by his auncestor of ỹ tailed land by feoffement in the countrey or otherwise.

Also, in ỹ same case aforesaid, if the case were such ỹ after the demaundant had iudgement to recouer against the tenant in tail, & the same tenaunt in the taile died before any execution had against him where by the tenemts descēd to his issue, & he ỹ recouered sued a Scire facias to haue execution of the iudgemēt against the issue in the taile, the issue shall plede the matter as before is said & so shall prooue ỹ the recouerye was faise or fained in ỹ lawe, & so shal barre him to haue execution of the iudgement &c.

Also, if tenaunt in the taile discontinue ỹ taile and die and his issue bringeth a wryt of Formedon against the discontinue being tenaūt of the freehoide of the land, and the discontinue pleadeth ỹ hee is not tenaunt, but otherwise disclaimeth fro the tenaūcy in the land, in this case the iudgement shalbee, that the tenaunt go without day, and after suche iudgement the issue in the taile ỹ is demaūdaunt may well enter in the lande notwithstanding the discontinuance. And by such entry he shalbe adiudged in his remitter, and the cause is, because ỹ if anye manne sue a Precipe quod reddat against any tenaunt of free hold, in which accion the demaundaunt shal not recouer damages, and the tenaunt pleadeth not nontenure, but otherwise disclaimeth

meth in the tenancy, the demãdaunt may not auerre the writ that he is tenant as the writ supposeth. And for that cause the demandant after that the iudgement is geuen that the tenant shal go without day, may enter into the tenements demaunded, the which shalbe as greate aduantage to him in this law, as if he had iudgement to recouer against the tenãt. And by suche entre he is in the Remitter by force of the tail, but where the demaundant recouereth damages against the tenãt, there the demaundant may auerre that he is tenãt as the writ supposeth, & that for the aduantage of the demandaunt for to recouer his damages, or els he shal not receiue his damages the which damages be or were geuen him by the lawe.

¶ Also, if a man bee disseised, and the disseisour dye his heir being in by discent, now the entre of the disseisy is taken away. And if ỹ disseisy bring his writ of entre vpon the disseisin in the Per, against the heire, & ỹ heire disclaimeth in the tenancy &c. the demaundãt may auerre his writ that he is tenant as the writ supposeth if he wil, for to recouer his damages. But yet if he will leaue the auerremẽt &c. he may lawfully enter into the lande, because of the disclaimer, notwithstanding that his entry before was taken away. And that was adiudged before my master sir Robert Danby late chefe Iustice of the cõmõ place and his compaignions.

¶ Also where the entre of a man is lawfull though ỹ he take estate to him whē hee is of full age for terme of life, or in tayle, or in fee, this is a remitter to him if such taking of estate be not by deed indented, or by matter of record ỹ shal conclude or stop him. For if a man be disseised, & therof taketh estate of the disseisor without deed or by deed pol. ỹ is a good remitter to the disseisie.

¶ Also, if a man let land for terme of life to a nother which alieneth to another in fee, & ỹ alienor maketh estat to ỹ lessor, this is a remitter to ỹ lessor, because his ētre was lawful.

¶ Also, if a man be disseised, & the disseisor letteth the land to the disseisie by deed pol or without deed for terme of yeres, whereby the disseisie entreth, this entre is ā remitter to the disseisie. For in such case where the entre of a man is lawfull, and a lease is made to hym though that he claime by wordes in the cōtrey that he hath estate by force of such lease or saieth openly that he claimeth nothing in ỹ land, but by force of suche lease, yet this is a remitter to him for such claime in the cōtrey is nothing to ỹ purpose, but if he claime in ỹ court of record that hee hath estate but by force of such lease & not otherwise, then he is concluded &c.

¶ Also, if two iointenauntes seised of certain land in fee, the one being of full age, the other within age be disseised, & the disseisour dieth seised & his issue entreth the one of the

iointenants being then within age, & after ꝑ he commeth to full age, the heire of the disseisee letteth ꝑ land to the same iointenaunt for terme of their liues, this is a remitter as to ꝑ halfe to him ꝑ was within age because ꝑ hee is seised of ꝑ moity ꝑ belongeth to him in fee, because his entrye was lawful. But the other iointenāt hath in the other half but estate for terme of life by force of the lease because hys entry was taken away &c.

¶ Warrantie. Cap. xiij.

IT is cōmonly said, that ther be three manner of warranties, that is to say, Warranty lineall, warranty collateral, and warranty that beginneth by disseisin. And it is to witte that before the statute of Glocester al warrāties which discended to them which were heires to them ꝑ made ꝑ warranty were barred to the same heires to demaunde any lands or tenements against those warranties, except ꝑ warraunties ꝑ began by disseisin, for suche warrāties was neuer barre to ꝑ heir, because ꝑ warranty began by wronge, that is to say, by disseisin.

¶ Warrantie that beginneth by disseisin is in such forme. As where there is father & sōne, & the sonne doth purchase land &c. & letteth ꝑ same land to his father for terme of yeres, & the father by his deed thereof enfeoffeth another in fee, and bindeth him and his heires to

warrantie.& if the father die whereby ꝯ warrantie discendeth to his sonne, this warrātie shal not barre the sonne, for notwithstandynge this warrantie the sonne may well enter in ꝯ lād or haue an assise against the alien if he will because ꝯ warrantie began by disseisin. For whē ꝯ father ꝯ had no estate but for terme of yeres made a feoffement in fee, this was a disseisin to ꝯ sonne of franktenemēt ꝯ then was in ꝯ sonne. In the same maner it is if ꝯ sonne let vnto the father ꝯ lād to hold at will & after ꝯ father maketh a feoffemēt wt warranty &c. And as it is said of ꝯ father so may it bee said of euery other auncestor &c.

¶ In the same maner it is, if tenant by elegit tenāt by statut merchant, or tenant by statut staple, make a feoffement in fee wt warranty &c. this shal not barre ꝯ heir ꝯ ought to haue ꝯ lād because that such warrāties beginneth by disseisin.

¶ Also if a warden in chiualry or warden in socage make a feoffemēt in fee or in fee taile for terme of life wt warranty &c. Such warrāties be no barres to ꝯ heirs to whō ꝯ land shal discēd, because ꝯ they begin by disseisin.

¶ Also if the father and the sonne purchase certain lands or tenements to haue & to hold to them iointly &c. & after the father alieneth the whole to another and bindeth him & hys heires to warranty &c. & after the father dyeth, this warranty shal not barre ꝯ sonne of ꝯ moity that belongeth to him of the same te-

nements

nemēts, because that as to the moitie that belonged to the sonne the warranty began by disseisin.

¶ Also if A. of B. be seised of a mease & F. of G. ẏ hath no righte to enter in ẏ same mease, claiming to hold ẏ sāe mease to him & to hys heirs ēter into ẏ same measez. but A. of B. thē is cōtinually dwelling in ẏ same mease, ī this case ẏ possessiō of ẏ frāktenemēt shal be alway adiudged in A. of B. & not in F. of G. because ẏ in such case wher two be in one mease or in other tenemēts, & ẏ one claimeth by one title & the other by another title, the law shal adiudge him in possession ẏ hath right to haue the possession of ẏ same tenement. But in the case afore said if F. of G. make a feoffemēt to certain barretours & extorcioners in ẏ countrey for to haue maintenaunce of them of ẏ same mease by a deed of feoffemēt & warrāty by force of whiche ẏ saide A. of B dare not dwel in ẏ sāe mease, but goeth out of ẏ same mease this warrāty beginneth by disseisin, because ẏ such a feoffemēt was cause ẏ the said A. of B. left the possession of ẏ same mease.

¶ Also, if a man that hath no right to enter in anothers tenemēts, enter into the said tenements, & incontinent maketh a feoffemēt to other persons by his deed with warranty, and deliuer to them seisin, thys warrantye beginneth by disseisin, because that the dysseisine and the feoffement were made as it were at one time. And that this is lawe, ye

may see it in a plee. In xxxi. E. iij. in a writ of Formedon in the reuersion.

¶ Warrantie lineal is where a man seised of certain land in fee maketh feoffement by his deed to another, and bindeth him & his heirs to warrantie, & hath issue & dieth, & the warrantie discendeth to his issue, this is a lyneal warranty. And the cause why this is a lineal warranty, is not because that the warranty discendeth from the father to his heire, but the cause is, because ỹ if no such deed & warranty had beene made by the father, then the right of the tenements should discende to the heire, and the heire should conuey the discent from the father &c. For if their be father and sonne, and the sonne purchace tenementes in fee, and the father disseisith the sonne therof and alieneth it to another in fee by his deede and by the same deede bindeth hym and hys heires to warrantie the same tenements and so foorth, and the father dieth, nowe is the sonne barred to haue the said tenements, for he may by no suite nor by any other meanes haue the said tenements, because of the sayde warrantie. And that is a collateral warrantie, and yet the warranty discendeth lineally from the father to the sonne. But because ỹ if no such deede with warrauntie had beene made, the sonne in no maner myght conueye the title that hee hath of the tenements from hys father to hym, in so muche that hys father hadde no estate nor right in the tenements

ments, therfore such warrantie is called collateral warranty. In so much that he ỹ made the warranty is collateral to the title of the tenements, & that is as much to say, that hee to whom warrantie discended, could not conuey the title that he had in the tenements by him that made the warranty, in this case if no such warrantie had ben made.

¶ Also, if there bee graundfather, father & sonne, & the graūdfather is disseised in whose possession the father releaseth by his deed ỹ warrantie &c. & dieth, & after the graundfather dieth, now is the sonne barred of ỹ tenements by the warranty of his father, & thys is called lineal warrātie, because ỹ if no such warrāty had bē made, ỹ same might not haue conueyed the right of the tenements to him, nor shew how he is heir to the graundfather but by meanes of the father &c.

¶ Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warranty &c & dieth without issue, and after this the father dieth, this is a lineal warrantye to ỹ ponger sonne, because that though the elder sone died in the life of the father, yet by possibilitie it might be that he might conuey to him the title of the land by his elder brother, if no such warrantie had ben made. For it might bee ỹ after the death of the father, the elder brother entred into the tenementes and died without issue, and then the ponger sonne shall conuey

to him the title by his elder brother. But in this case if ỹ yõger sonne releas ỹ warrãty to the disseisour & dieth wout issue, this is a collateral warrãty to ỹ eldest sonne because ỹ of such land as was to the other, the elder brother by no possibilitie might cõuey to him the title by meane of the yonger brother.

¶ Also if tenant in the taile haue issue thres sonnes and discontinue the taile in fee, & the middle sonne releaseth by his deed to the discontinuee and bind him and his heires to warrantise &c. and after the tenant in the tail die and the middle dyeth without issue, now is ỹ elder sonne barred to haue any recouery by a writ of Formedon, because that the warrãty of the middle brother is collateral to him, in so much that he may by no maner conuey to him by force of the taile anye discent by the middle brother, & therefore it is a collateral warranty. But if in this case ỹ elder brother die wout issue, now the yonger brother may wel haue a Formedon to the discender & reconer ỹ same lãd, because ỹ the warrantye of the middle brother is lineal to the yõgest brother, because it may be ỹ by possibility, ỹ middle brother may be seised by force of the taile after the death of his elder brother, & thẽ the yongest brother may conuey his title of discent by the middle brother &c.

¶ Also if tenant in the taile discontinue the taile & hath issue, and die, and the vncle of the issue releale to the discontinuee ỹ warranty &

die.

dye without issue, this is a collateral warrãtie, to the issue in the taile, because ỹ the warranty discendeth vpon the issue, whiche cannot conuey himselfe to the taile by meane of his vncle.

¶ Also, if tenant in the taile haue issue two daughters & die, & the elder daughter entreth into the whole, & thereof maketh a feoffemẽt in fee wᵗ warrantie, & after the elder daughter dieth wout issue, in this case ỹ yõger daughter is barred as to ỹ moity, & as to ỹ other halfe she is not barred for as to the moity ỹ belongeth to ỹ yonger daughter she is barred because that as to the moity that belõgeth to her, she cannot conuey the discent by ỹ meanes of her elder sister. And therefore as to ỹ moitie that is a collateral warrantie, but as to ỹ other moitie which belongeth to her elder sister by the same elder sister ỹ warranty is no barre to ỹ yongest sister, because ỹ she may cõueigh her discẽt as to ỹ moitie that belõgeth to her elder by the same elder sister. And so as to that moity that belongeth to ỹ elder sister the warrantie as to that is lineall to the yonger sister &c.

¶ And note well that as to him that demãdeth fee simple by any of his auncestors, she shalbe barred by lineal warranty which discendeth vpon him, except it be restrained by some statute, but he which demãdeth fee tail by a writ of Formedon in the discender shall not be barred by lineall warranty, excepte he haue

haue enoughe by diſcent in fee ſimple by the ſame auncester ỹ made the warranty, but a collateral warrãty is barre to him ỹ demaũdeth fee, and alſo to him that demaundeth fee taile, without any other diſcent of fee ſimple, except in caſes that be reſtrained by ỹ ſtatute & other cauſes for certaine cauſes as ſhalbee ſaid hereafter.

¶ Alſo, if land be geuen to a man and to hys heires of his body begottẽ, the which taketh a wife & haue iſſue a ſonne betwene thẽ, and the husband diſcontinueth the taile in fee, and dieth, & after the wife releaſeth to the diſcõtinuee in fee with warrantie and dieth, and ỹ warrantie diſcendeth to the ſonne, this is a collateral warrantie. But if tenemẽts be geuen to the husband & the wife, and to ỹ heirs of their two bodies begottẽ which haue iſſue a ſonne, & the husband diſcontinueth the tail & dieth, & after the wife releaſeth ỹ warrãty & dieth, this warranty is but a lineal warrãty to the ſonne, for the ſonne ſhal not bee barred in this caſe to ſue his writ of Formedõ, except he haue enough by diſcent in fee ſimple by his mother, becauſe that their iſſue in a writ of Formedõ ought to conuey to him the right as heir to his father & to his mother of their two bodies begottẽ by forme of ỹ gift. And ſo in ſuch caſe the warranty of the father, and the warrantie of the mother be but as lineal warranties to the heir &c. And note wel that in euery caſe where a man demaun-

deth

deth tenements in fee taile by a writ of Formedon, if any of the issue in the taile that had possession, or that hath possession make a warrantie &c. if he that sueth the writ of Formedō might by any possibility by matter that might be in deed conueied to him, by him that made the warranty by the forme of ỹ gift. This is a lineal warrantie, & not collateral.

¶ Also if a man haue issue three sonnes, & he geueth lande to his eldest sonne to haue & to hold to him and to the heires of his bodye begotten, and for default of such issue the remainder to the middle sonne to him, and to ỹ heires of his body begotten, and for defaulte of suche issue the remainder to the yongest sonne, and to his heires of his body begotten in this case if the eldest sonne discontinue the taile in fee and binde him, and his heires to warrantie and die without issu, this is a collateral warranty to the middle sonne and he shalbe barred to demaunde the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collateral to ỹ title which beginneth by force of the remainder.

¶ In the same maner it is if the middle sōne had the same land by force of the remaindrr, because ỹ his eldest brother made no discōtinuance, but died without issue of his bodye, and after the middle sonne maketh a discontinuance with warrrantye &c. & dieth without

out issue, this is a collateral warranty to the yongest sonne & also in this case if any of the said sonnes be disseised, & the father ꝑ made ꝑ gift release to ꝑ disseisor al his right &c. with warrantie, this is a collateral warrãty to ꝑ sonne vpõ whom ꝑ warrãty discended causa qua supra. And so note wel ꝑ wher a man ꝑ is collateral is ꝑ title &c releaseth with warranty, that is a collateral warranty.

¶ Also, if the father geue land to his elder sonne to haue & to holde to him & the heires males of his body begotten, the remainder to the second sonne &c. if the eldest brother alien in fee with warrantie &c. & hath issue female & dieth without issue male, this is not a collateral warrantie to the second sonne, nor shal not hurt him of his action by Formedon in the remainder, because ꝑ the warranty discẽdeth to the daughter of the eldest sonne, & not to the second sonne. For euery warrãty that discendeth, discendeth to him that is heir vnto him which made the warranty by the common lawe &c.

¶ Also, if land be geuen to a man and to his heires males of his body begotten, and for default of suche issue the remainder thereof to his heires females of his body begotten, and after the donee in the taile maketh a feoffemẽt in fee with warranty according, and hath issue a sonne & a daughter, and dieth this warrantie is but a lineal warrantie to the sonne to demaunde by writ of Formedon in the discendre,

cendre. And it is but ineall to the daughter to demaund the same land by writ of Formedon in ỹ remainder. yf her brother dye without heire male because that she claimeth as heire female of ỹ body of her father begotte. But in this case if her brother in his life release to the discontinue &c. with warranty &c. And after die without issue, this is a collateral warrantie to the daughter, because ỹ she cānot cōney to her the right ỹ shee hath by force of ỹ remainder by any mean of discēt by her brother, & therfore the brother is collateral to ỹ title of his sister, & therefore his warranty is collaterall &c.

¶ Also I haue harde say that in the time of king Richard the second, ther was a Justice in the common place dwellinge in Kent, called Rikhil, that had issue diuers sonnes. And his entent was, that his eldest sonne should haue certain lands to him & the heires of his body begotten, and for defaut of issue, the remainder to his second sonne & so forth. And so the third sōne &c. And because ỹ he would that none of his sonnes should alien or make warrantie for to barre or to hurt that other ỹ should be in the remainder &c. Hee caused to be made an Indenture to such effect, that is to say ỹ the lands and tenements were geuē to his eldest sonne vpon this condicion, that if the eldest sonne aliened in fee or in fee taile &c. or any of his sonnes alyened &c. that then theire estate shoulde cease and shoulde bee voide

voide, and that then the said landes or tenements immediately should remain to ỹ secõd sonne and to the heires of his body begotten and that vpon the same condicion. S. that if the second sonne alien &c. that then his estate should cease, & that then the same lãds & tenements should remain to the third sonne, & to the heires of his body begotten and so forth, the remainder to other of his sonnes & liuery of seisin was made accordyng. But it semeth by reason ỹ al such remainders in the forme beforesaid be void, & of no value, and that for three causes. One cause is because euery remainder that beginneth by a deed, it behoueth that the remainder be in him to whom ỹ remainder is tailled by force of the same deede when the liuery of seisin is made to him that hath ỹ franktenement,

And suche remainder was not to the seconde sonne at the time of liuery of seisin in ỹ case before saide &c.

¶ The second cause is, if the first sonne alieneth the tenements in fee, then is the frãktenement and the fee simple in the aliene & in none other, and if the donour had any reuersion by such alienacion, the reuersion is discõtinued, thẽ though that by some reasõ it may be that such remainder shal beginne his being and his growing. Immediatly after such alienacion made to a straunger, that hath by the same alienacion franktenement and fee simple, and also if suche remaynder shoulde

bee

be good then might he enter vpon the alyene where he hath no maner of right, before ỹ alienacio, which should bee inconuenient. The third cause is, when the condicion is such ỹ if ỹ eldest sonne alien &c. ỹ his estate shal cease or shalbe void &c. thē after such alienacio &c. may ỹ donor enter by force of such cōdicio &c. as it semeth, & so ỹ donor or his heirs in such case ought more sooner to haue ỹ land thē ỹ secōd sonne ỹ had no right before such alienacio &c. & so it semeth ỹ such remainders in the case beforesaid be void.

¶ Also at the common law before ỹ statute of Gloucester, if tenant by the curtesie had alienced in fee with warranty accordāt, after his decease this was a barre to the heire &c. as it appeareth by the wordes of the same statut. But it is remedied by the same statut, that the warrantie of the tenaunt by the curtesye shalbe no barre to the heire, excepte hee haue ynough by discent by the tenaunt by the curtesie, for before the said estatute ỹ was a collateral warranty to the heire, because hee could not conuey any title of discent to the tenemēts by the tenaunt by the curtesie, but onelye by his mother or other of his aunceſters &c. & that is the cause why it was collateral warrauntie. But if a man enherite take a wyfe whiche haue issue a sonne betwene them, and the father dieth, and the sonne entreth in the land, & endoweth his mother, and after his mother alieneth that that shee hath in her

dower

dower to another in fee, with warranty according, & after dieth, & the warranty discendeth to the sonne. now the sonne shalbe barred to demaunde the same land because of ỹ said warrantie, because that suche collaterall warranty of tenant in dower is not remedied by any statute. The same law is where tenaunt for terme of life maketh an alienacion with warrantie &c. and dieth, and the warrãtye discendeth to him that had the reuersion, or ỹ remainder &c. they shalbe barred by such warrantie &c.

¶ Also, in the said case if it so were that whẽ the tenant in dower alieneth &c. the heir was within age and also at that time that the warranty discendeth vpon him, hee was with in age, in this case the heire may after enter vpon the alienee notwithstanding the warrãtie discended &c. because that no laches shal bee adiudged in the heire within age, that he entred not vpon the alienee in the life of the tenaunt in dower, but if the heire was with in age at the time of the alienacion, and after he came to full age in the life of the tenaunt in dower, and so beinge of full age hee entred not in the life of the tenãt in dower, and after the tenãt in dower dieth, there paraduenture the heire shalbe barred by such warranty because it shalbe accompted his folye ỹ he being of full age, entred not in the life of the tenant in dower &c.

¶ Also, it is spoken in the ende of the sayde

statute

eſtatute of Glouceſter, ꝑ ſpeaketh of the alienacion & warranty made by the tenāt by the curteſie in ſuch fourme.

¶ Alſo in ꝑ ſame maner ꝑ heire of ꝑ woman after ꝑ death of her father & mother ſhal not be barred of acciō if he demaūd the heritage or the mariage of his mother by writ of Entre that his father aliened in the time of his mother, whereof no fine is leuied in ꝑ kings court &c. And ſo by force of the ſame ſtatut if ꝑ huſband of ꝑ wife alien the heritage or maritage of his wife in fee & warraunty &c. by this deede in the countrey, this is clere lawe ꝑ this warrāty ſhal not barre ꝑ heire except he haue ynough by diſcent &c. But ꝑ doubt is if ꝑ the huſband alien the heritage of hys wife by fine leuied in the kings courts with warranty &c. If this ſhal barre the heire & out any diſcent in value &c. And as to ꝑ, I will ſay here certain reaſons ꝑ I haue hard ſay in this matter. I hard my maſter ſir Richard Newton late chiefe Juſtice of the cōmon place, ſay once in ꝑ ſame place, ꝑ ſuche warranty ꝑ the baron maketh by fine leuied in the kynges courte, ſhall barre the heire though that he haue nothing by diſcent, becauſe the ſtatute ſayeth, where of no fine is leuied in the kings court &c. And ſo by his opynion, this warranty by fine &c. abideth yet a collateral warranty as it was at the common law not remedied by the ſaide eſtatute, becauſe that the ſaide eſtatute excepteth the

alienaciō by fine with warranty. And some other haue said & yet say the contrary, & this is their prooke, that as by the same chapiter of the said estatute, it is ordeined þ the warrantie of the tenaunt by the curtesy shal not barre þ heire except he haue ynough by discent &c. though þ the tenāt by the curtesy le up a fine of the same lāds with warrāty &c. as strōgly as he can, yet this warrāty shall barre þ heir except he haue assets or inough by discent &c. And I beleeue þ this is lawe, and therefore they say þ it should bee inconuenient to vnderstand þ statut in such forme that a man that hath not but in the right of his wife, maye by fine leued by himselfe of the tenements þ he hathe but in the ryghte of hys wyfe wyth warrantye &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenant by curtesie cannot doe it. But they haue saide, that the statut shalbe vnderstād after this forme that is to say, where the statute speaketh, whereof no fine is leued in þ kings courte, that is to say, where no lawful fine is right fully leued in the kings courte, & that is, whereof no fine of the husbād & his wife is leued in the kings court, for at the tyme of the making of the saide statute, euery state of lands or tenemēts that any man or woman had that shoulde discend to hys heyre, was fee simple wythout condicion or vppon condicion in deed or in lawe. And because þ

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such fine then might lawfully haue bē leuied by the husband & his wife, & ꝑ the heires of the husband warrant &c. such warraty shal barre the heire &c.

¶ And so they saye ꝑ this is the vnderstanding of the said statute, for if the husbande & the wife made a feoffement in fee by deed in the countrey, the heire after the decease of ꝑ husband and ꝑ wife shal haue a writ of ētre Sur cui in pita &c. notwithstanding ꝑ warrantie of ꝑ husband. ¶ Bē if no such exceptiō was made in ꝑ statute of ꝑ fine leued &c. bē the heir should haue ꝑ writ of entre &c. notwithstanding ꝑ fine leuied by the husband & the wife, because ꝑ ꝑ wordes of ꝑ statute before ꝑ exceptiō of the fine leuyed &c. be generally &c. ꝑ is to saye, ꝑ the heire of the woman after the deathe of her husband and ꝑ wife shal not be barred of accion if he demaunde the heritage or the mariage of his mother by a writte of Entre that his father alienedin ꝑ time of his mother, & so it should bee in the case of the statute except such wordes were that is to saye wherof no fine is leuyed in ꝑ kinges court. And so they say that this is to vnderstande, wherof no fine by the husband and the wife is leuied in the kings courte ꝑ which is lawfully leuied in such case. ¶ For if the iustices haue knowlege ꝑ a man ꝑ hath nothing but in the righte of his wife leuye a fine in his name onely, theye wil not nor ought not to take such fine to be leuyed by

husbend onely without naming the wife, there fore enquire of this matter.

¶ Also it is to wete, ꝑ in such wordes where the heir demaũdeth the heritage or mariage of his mother, this word is a distinctiue, & is as much to say, if the heir demaũd the heritage of his mother, ꝑ is to bee vnderstande the tenemẽtes ꝑ his mother had in fee simple by discent or by purchase, or if the heire demaũd the mariage of his mother, ꝑ is to say, the tenementes ꝑ were geuen vnto his mother in frankmariage.

¶ Also where it is moued in diuers deedes these wordes in latin. Ego & heredes mei &c. warrantizabimus & imppetuũ defendem⁹, it is to see what effect hath ꝑ worde defendem⁹ in such deeds. And it seemeth ꝑ it hath not the effect of warrantise, nor comprehendeth any cause of warrãtise, for if it should be so ꝑ it taketh effect or cause of warãtise, thã it shoulde be put in some fines leuied in the kings court, And a man neuer saw ꝑ these wordes defendemus was in fine but onely this word warrantizabim⁹, by which it seemeth ꝑ this verbe warantiso maketh warrantye & is ꝑ cause of warrantize, & none other worde in our lawe.

¶ Also if tenant in the taile be seised of tenements deuisable by testamente after the custome &c. And the tenant in the taile alieneth the tenementes to his brother in fee, & hath issue and dieth, & after his brother deuiseth

by

by his testament the sāe tenemts to another in fee, & bindeth him & his heirs to warrantise &c. & dieth without issue, it seemeth that this warrantie shal not barre the issue in ꝑ taile if he wil sue his writ of Formedon, bee cause that his warrantie discended not to ꝑ issue in the taile, in so much as the vncle of ꝑ issu was not bound by force of the same warrantie in his life. And ꝑ cause ꝑ he could not warrant the land in his life is, in so muche ꝑ the deuisee could not take any execucīō or effect but after his decease, & in so muche ꝑ ꝑ vncle in his life was not holde to warrātie, such warrantise ne may not discend from hī to the issu in the taile &c. for nothing may discend from the auncester to his heire but the sāe that was in ꝑ aūcester. Also a warrāty may not go without the nature of tenemtes by custome, but onely after forme of ꝑ cōmō lawe. For if tenant in taile be seised in tenemts in borough ēglish, wher the custome is ꝑ al tenemts of ꝑ same borough ought to discend to the yongest sonne, & hee discōtinueth the taile with warrantise &c. & hath issu two sonnes & dieth seised of other lāds & tenemts in the same borough in fee simple to ꝑ value & more of the tenemts tailed and so forthe, yet the yongest sonne shal haue a Formedon of the tenements tailed, & shal not be barred by ꝑ warrantise of his father though ynough to him discended in fee simple, frō the same father after the custome, for this that the war

rantise discendeth vppon the elder brother ꝑ, is in full life &c. & not vpon the ponger sone. In the same maner it is of collateral warrãtise made of such tenements where ꝑ warrãtise discendeth to the elder sonne &c this shal not barre the ponger sonne &c. In ꝑ same maner it is of tenemẽts in ꝑ shire of Kẽt, which be called Gauelkind, the which tenementes be departable among ꝑ brethren &c. after the custome &c. if any such warrãty be made by their auncestors, such warranty discendeth al onely to the heire ꝑ is heire by ꝑ common law, & not to al the heires which are heires of such tenements after the custome &c.

¶ Also if a tenaunt in taile haue issue two daughters by diuers ventres, and dieth, and the daughters enter, & a straunger disseiseth them of the same tenements, and one of the daughters releaseth by her deed to the disseisour al her right, and bindeth her & her heirs to warrantise, and dyethe without issue, in this case the first ꝑ suruiueth may wel enter & put out the disseisour of al the tenementes for this ꝑ such warrantise is no discontinuance nor collateral warrantise to the sister ꝑ suruiueth, for this ꝑ they bee of halfe bloud, and the one may not be heire to the other after ꝑ comon law. But otherwise it is where there bee daughters of tenauntes in ꝑ taile by one venter.

¶ Also if tenaunt in the taile let tenements to another for terme of life ꝑ remainder to an

other

other in fee, & the collateral auncestor cõfirmeth the estate of the tenãt for term of life & bindeth him and his heirs to warrantise for terme of life of the tenant for terme of life & dieth, & ỹ tenãt in ỹ tail hath issu & dieth, now this issue is barred to aske the tenemẽtes by writ of Formedon during ỹ life of ỹ tenant for term of life, because of ỹ collateral discẽt vpon the issue in the tail. But after the decease of the tenãt for terme of life ỹ issu shall haue a Formedon &c. And vpõ this I. haue heard a reason that this case shal proue by ã other case ỹ is to say, if a man let his lande to another, to haue and to holde vnto him & to his heires for term of anothers life, & the lessour dieth, leauing him to whose lyfe &c. And a stranger entreth in the land, that the heir of the lessee may put him out. for this ỹ in ỹ case next aforesaid, in so much that a mã may binde him and his heirs to warraunt to the tenaunt for terme of life, alonelye during the life of the tenant for terme of life & the warantise discendeth to the heir of him that made the warantise of the which warrantise is no warrantise, of inheritance, but al onely for terme of anothers life, by ỹ same reason where tenementes be let to a man to haue and to holde to him and to hys heires for terme of anothers life, if the father dyeth leuinge hym to whose life &c. hys heyre shall haue the tenemẽts ieuinge him to whose life &c. For they haue said that if a mã graunte

an Annuitie to another to haue & to take to hi
& to his heires for terme of anothers life yt
ꝑ the graūtee die &c. That after his heire
shall haue ꝑ annuity during ꝑ life of him to
whose like &c. Quere de ista materia &c.

¶ But where such lease or graunte is made
to a man of his heires for terme of yeres, in
this case the heire of the lessee & the graūtee
shal neuer haue after ꝑ death of the lessee or
the graūtee that, ꝑ is so lerten or graunted
for this ꝑ it is chattel real, and all chattel re
als by the common law shal come to the ex=
ecutors of the graūtee or the lessee, and not
to the heire &c.

¶ Also in some cases it may bee, ꝑ notwbeyt
ꝑ a collateral warrantise be made in fee &c.
yet such warrantise may be defeated & anie=
ted. As the tenant in the taile discontinueth ꝑ
taile in fee, & the discontinue is disseised, & ꝑ
brother of the tenaūt in the tail releaseth by
his deede to the disseisour al his right &c. &
warrantise in fee, & dieth without issue, & the
tenant in the taile hath issue, and dieth, now
the issue is barred of his accion by force of ꝑ
collateral warrantise descending vpon hym
but if after this ꝑ discontinue enter vpon the
disseisour, then maye the heires in the tayle,
haue his accion of Formedon &c. for this ꝑ
the warrantie is aniented and defeated. For
when the warrātise is made vnto a mā vpō
any estate that then hee had, if the estate bee
defeated, the warranty is defeated.

In

¶ In the same maner it is if the discontinue make a feoffement in fee reserving to hī certein rent, & for defaut of paiment a reentry &c. & a collateral auncestre releaselethe to ꝑ feoffee ꝑ hath estate vpon cōdicīō &c. & dieth wout issue though ꝑ the warranty descend vpō the issue in ꝑ taile, yet if after ꝑ rent be behind & ꝑ discontinue entreth into ꝑ land &c. then the issue in the taile shal haue his recouerye by a writ of Formedon, for this ꝑ the warrātye collateral is defiled. And so if any such collateral warranty be pleded against ꝑ issue in ꝑ taile in his accīō of Formedon, he may shew the matter as is afore said, how the warrāty is defeated, and so he may wel maintein hys accyon.

¶ Also if tenīt in ꝑ taile make a feoffemēt to his vncle, & after his vncle maketh a feoffmēt in fee wt warrātise &c. to another, & after the feoffee of ꝑ vncle enfeoffeth again ꝑ vncle in fee & after ꝑ vncle enfeoffeth a straunger in fee wout warrantise, & dieth wout issue, & ꝑ tenant in the tail wil bring his writ of Formed against ꝑ straūger ꝑ was in ꝑ feoffemēt &c. by the vncle, in this case ꝑ issue shal neuer be barred by ꝑ warranty ꝑ was made by the vncle to ꝑ said first feoffe of his vncle, for this ꝑ the said warrantise was defeated & anentred, for this ꝑ the vncle tooke again to hym as greate estate of hys fayde firste feoffee to whom the warranty was made as the same feoffee had of hym. And ꝑ cause why ꝑ warranty

rantie is amented, in this case is this ỹ is to say, ỹ if the warrantise were in his force thē the vncle shal warrāt vnto him selfe ỹ may not be, but if the feoffee mad estate to ỹ vncle for term of life in fee taile, sauing the reuersion vnto him &c. Or ỹ he make a gift in the taile to the vncle, or a lease for terme of life ỹ remainder ouer &c. In this ỹ warrātise is not al vtterly amented, but it is put in suspences during the estate ỹ the vncle had, for after this ỹ the vncle is dead without issu, then he in the reuersiō or hee in the remaider shal barre ỹ issue in the taile of his writte of Formedone by the collateral warrantise in such case &c. But otherwise it is where ỹ vncle had as great estate in the land by ỹ feoffee to whō ỹ warrantise was made as ỹ feoffee had of him &c.

¶ Also if the vncle after such feoffemēt made with warrātise or a release mad by hī with warrātise be attainted of felony or outlawed of felony such collateral warranty shall not barre nor geeue the issue in the taile, for this ỹ by ỹ attainder of felonye, the bloud is corrupt betweene them &c.

¶ Also, if tenāt in ỹ taile be disseised, & after maketh a release to ỹ disseisor & warrantise in fee, & after the tenāt in ỹ taile is attaynted, or outlawed of felony, & hath issu & dieth, in this case the issue in ỹ taile may enter vpō ỹ disseisour.

¶ And ỹ cause is for this, ỹ nothing maketh discon-

diſcontinuance in this caſe but ꝑ warrãty, & the warranty may not diſcend to ꝑ iſſue in ꝑ taile, for this ꝑ the bloud is corrupt betwẽ him ꝑ made the warranty & the iſſue in the taile. For the warrantie alway abideth at ꝑ cõmon law, & the cõmõ law is ſuch, ꝑ whẽ a mã is outlawed or attaĩted of felony. which outlawry is an attainder in ꝑ law ꝑ ꝑ bloud betwene him & his ſonne & al other whiche ſhould be ſaid his heirs is corrupt, ſo that no thing by diſcent may diſcend to anye ꝑ maye be his heire by the cõmõn lawe. And ꝑ wife of ſuch a mã ꝑ is ſo attaĩted ſhal neuer be endowed i ꝑ tents of her huſbãd ſo attaĩted &c.

¶ And the cauſe is becauſe mẽ ſhould more eſchew to do felony &c. But the iſſue in the taile, as to the tenemẽts tailed is not in ſuche caſe barred, becauſe he is ĩherited by force of the ſtatute, & not by the courſe of the cõmon lawe. And therefore ſuch attainder of his father or of his anceſter in the taile &c. ſhal not put him out of his right, that he ſhould haue by force of the taile.

¶ Alſo, if tenant in the taile enfeoffe the hys vncle which enfeoffeth another ẽ warrantie &c. if after the feoffee by his deede releaſe to ꝑ vncle al maner of warrãty, or al maner of couenãts reals, or al maner of demaũds, by ſuch releaſe the warrantie is extinct.

And if the warrantie in ſuch caſe be pleaded againſte the heire in the tayle that bringeth his writ of Formedon to barre the heire of

hys

his accion of the heire haue and plede ỹ ſaid releaſe &c. he ſhal defeat the plee in barre &c. And many other caſes and matters be their, wherby a man may defeate warranties.

¶ And it is to weete that in the ſame maner as collateral warrantie may bee defeated by matter in deed or in law, in the ſame maner may lineal warrantie bee defeated &c. For if ỹ heire in the tail dying a writ of Formedon & a lineal warrantye of his auceſter inheritable by force of ỹ taile bee pleded againſt him yͭ that ỹ alſets to him diſcēded of fee ſimple by the ſame auncеſter ỹ made the warranty, if the heire that is demaundant may adnul & defeate the warrantye this ſufficeth to him, for ỹ diſcent of other tenemēntes of fee ſimple maketh nothing to barre the heire yͭ out the warrantye.

&c.

FINIS.

¶Here begynneth the table of this preſent booke.

The ſecond booke.

Rent

Rent charge.
And rent secke.
¶ And these two smal bookes haue I made for thee for to vnderstand better certain chapiters of the auncient bookes of tenures.

The thirde booke.

¶ The thirde booke is of parceners.
Of ioyntenants.
Tenauntes in common.
Estates of lands or tenements vppon condicion.
Discentes that take away entries.
Continual claime.
Releses.
Confirmations.
Attournements.
Remitters.
Of garranties, that is to say.
Garrantie lineal.
Garranty collateral.
And Garrantie that beginneth by disseisin.

¶ And knowe thou my sonne that I will not ỹ thou beleeue that all that that I haue saide in the saide bookes, be lawe, for ỹ wyll I not take vppon mee nor presume. But of those things ỹ bee not lawe enquire & learne of my wise maisters learned in the lawe.

Notwithstandinge thoughe that certeyne things that be noted & specified in the sayde booke

The table

bookes bee not lawe, yet suche thynges shal make thee more apt & hable to vnderstand, & learne the arguments and the reasons of the law. For by the arguments and the reasons in the lawe, a man may more soner come to ỹ certein & to the knowledge of the law. Lex plus laudatur quando ratione probatur.

(.*.)

Imprinted at London
in Fleetstreete within Temple
Barre at the signe of the Hand
and Starre by Ry-
chard Tottyl.
1576.

¶ Cum priuilegio.